



APPLICATION ACCEPTED: March 21, 2008
BOARD OF ZONING APPEALS: June 17, 2008
TIME: 9:00 a.m.

County of Fairfax, Virginia

June 10, 2008

STAFF REPORT
SPECIAL PERMIT APPLICATION NO. SP 2008-PR-034
PROVIDENCE DISTRICT

APPLICANT/OWNERS: G. Ray Worley, Sr. and Estella C. (H) Worley

SUBDIVISION: Dunn Loring

STREET ADDRESS: 2537 Gallows Rd.

TAX MAP REFERENCE: Tax Map 49-2 ((1)) 4B

LOT SIZE: 15,375 square feet

ZONING DISTRICT: R-3

ZONING ORDINANCE PROVISION: 8-914 and 9-918

SPECIAL PERMIT PROPOSAL: To permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 6.6 ft. from the rear lot line and to permit an accessory dwelling unit.

STAFF RECOMMENDATION: Staff recommends approval of the accessory dwelling unit portion of SP 2007-SP-124 subject to the proposed development conditions contained in Appendix 1.

It should be noted that it is not the intent of staff to recommend that the Board, in adopting any conditions, relieve the applicant/owner from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

It should be further noted that the content of this report reflects the analysis and recommendations of staff; it does not reflect the position of the Board of Zoning Appeals. A copy of the BZA's Resolution setting forth this decision will be mailed within five (5) days after the decision becomes final.

O:\gchase\Accessory Dwelling Units\Worley Staff Report.doc

Report by Greg Chase

The approval of this application does not interfere with, abrogate or annul any easements, covenants, or other agreements between parties, as they may apply to the property subject to the application.

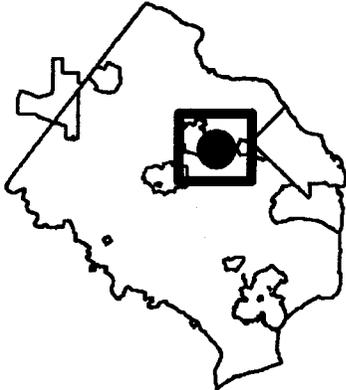
For additional information, call Zoning Evaluation Division, Department of Planning and Zoning at 324-1280, 12055 Government Center Parkway, Suite 801, Fairfax, Virginia 22035. **Board of Zoning Appeals' meetings are held in the Board Room, Ground Level, Government Center Building, 12000 Government Center Parkway, Fairfax, Virginia 22035-5505**



Americans with Disabilities Act (ADA): Reasonable accommodation is available upon 7 days advance notice. For additional information on ADA call (703) 324-1334 or TTY 711 (Virginia Relay Center).

Special Permit

SP 2008-PR-034



Applicant: G. RAY WORLEY, SR. & ESTELLA C. (H.) WORLEY

Accepted: 03/21/2008

Proposed: ACCESSORY DWELLING UNIT AND TO PERMIT REDUCTION TO MINIMUM YARD REQUIREMENTS BASED ON ERROR IN BUILDING LOCATION TO PERMIT ACCESSORY STORAGE STRUCTURE TO REMAIN 6.6' FEET FROM THE REAR LOT LINE

Area: 15,375 SF OF LAND; DISTRICT - PROVIDENCE

Zoning Dist Sect: 08-0918 08-0914

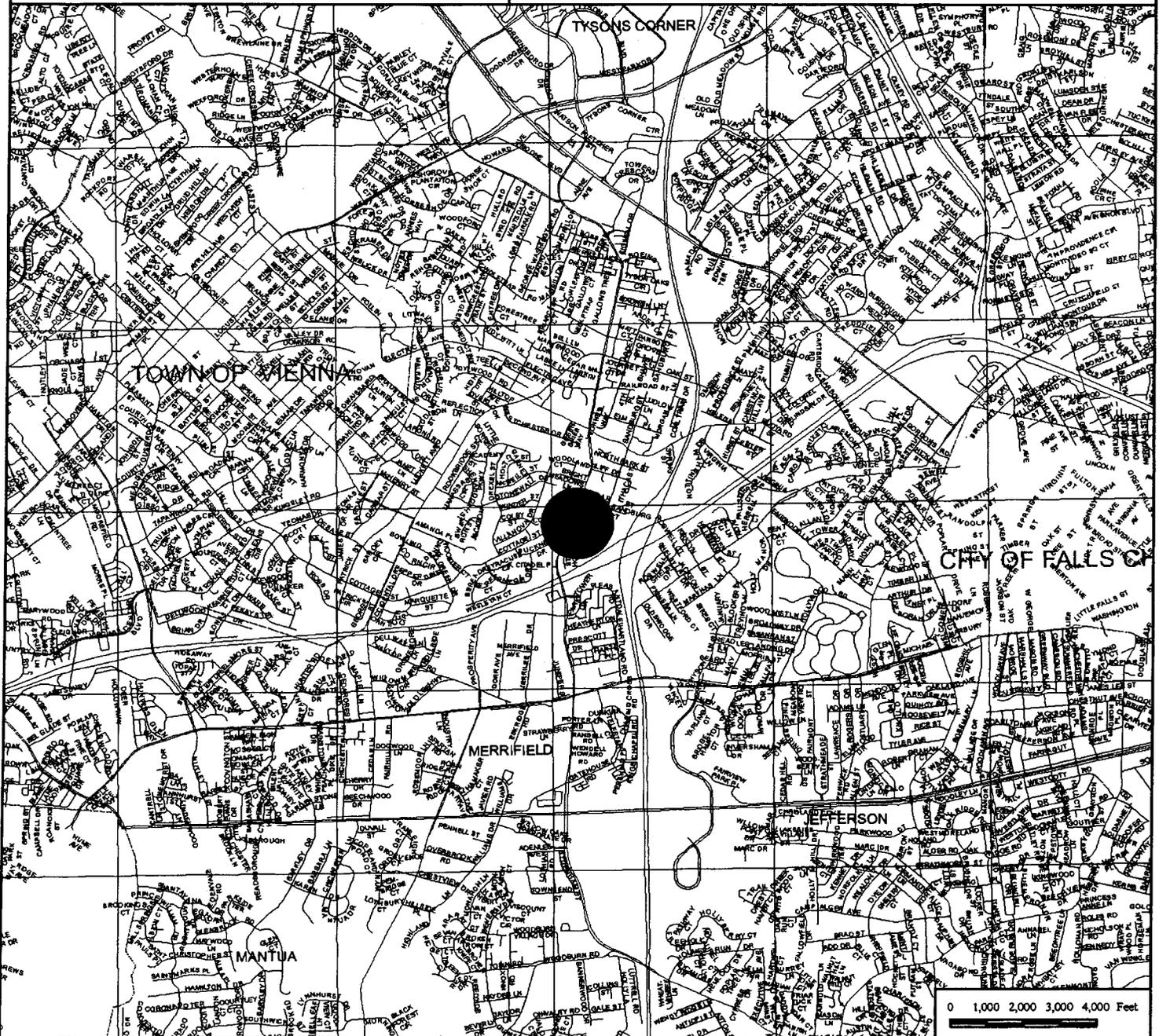
Art 8 Group and Use: 9-17 9-13

Located: 2537 GALLOWS ROAD

Zoning: R- 3

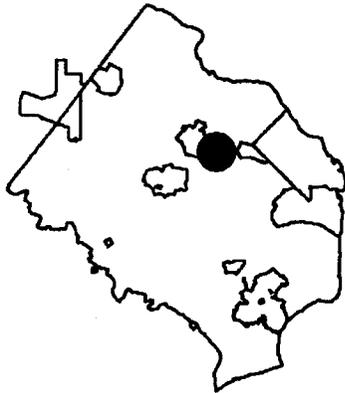
Overlay Dist:

Map Ref Num: 049-2- /01/ /0004B



Special Permit

SP 2008-PR-034



Applicant: G. RAY WORLEY, SR. & ESTELLA C. (H.) WORLEY

Accepted: 03/21/2008

Proposed: ACCESSORY DWELLING UNIT AND TO PERMIT REDUCTION TO MINIMUM YARD REQUIREMENTS BASED ON ERROR IN BUILDING LOCATION TO PERMIT ACCESSORY STORAGE STRUCTURE TO REMAIN 6.6' FEET FROM THE REAR LOT LINE

Area: 15,375 SF OF LAND; DISTRICT - PROVIDENCE

Zoning Dist Sect: 08-091808-0914

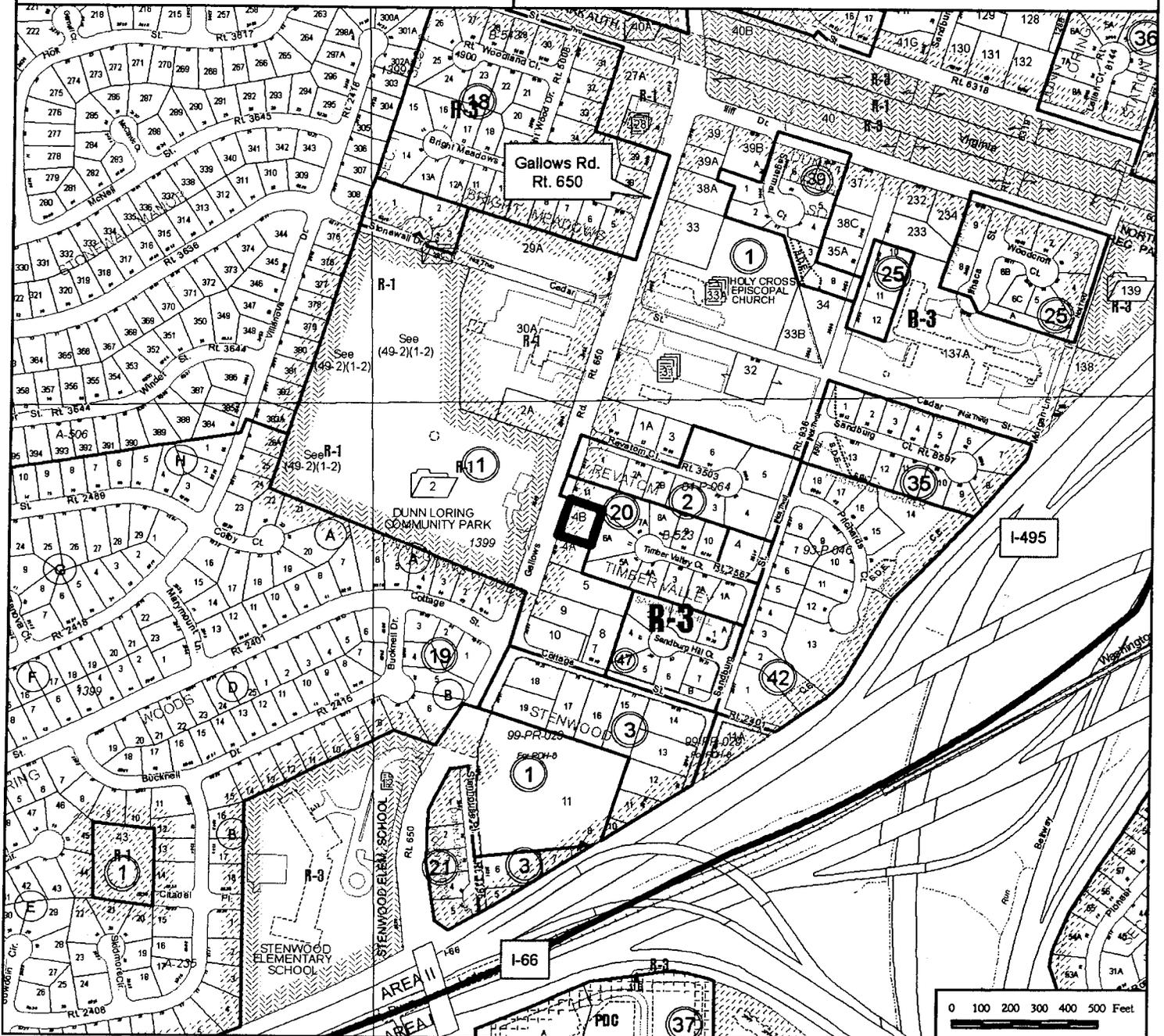
Art 8 Group and Use: 9-17 9-13

Located: 2537 GALLOWS ROAD

Zoning: R-3

Overlay Dist:

Map Ref Num: 049-2- /01/ /0004B



7-A

TIMBER VALLEY

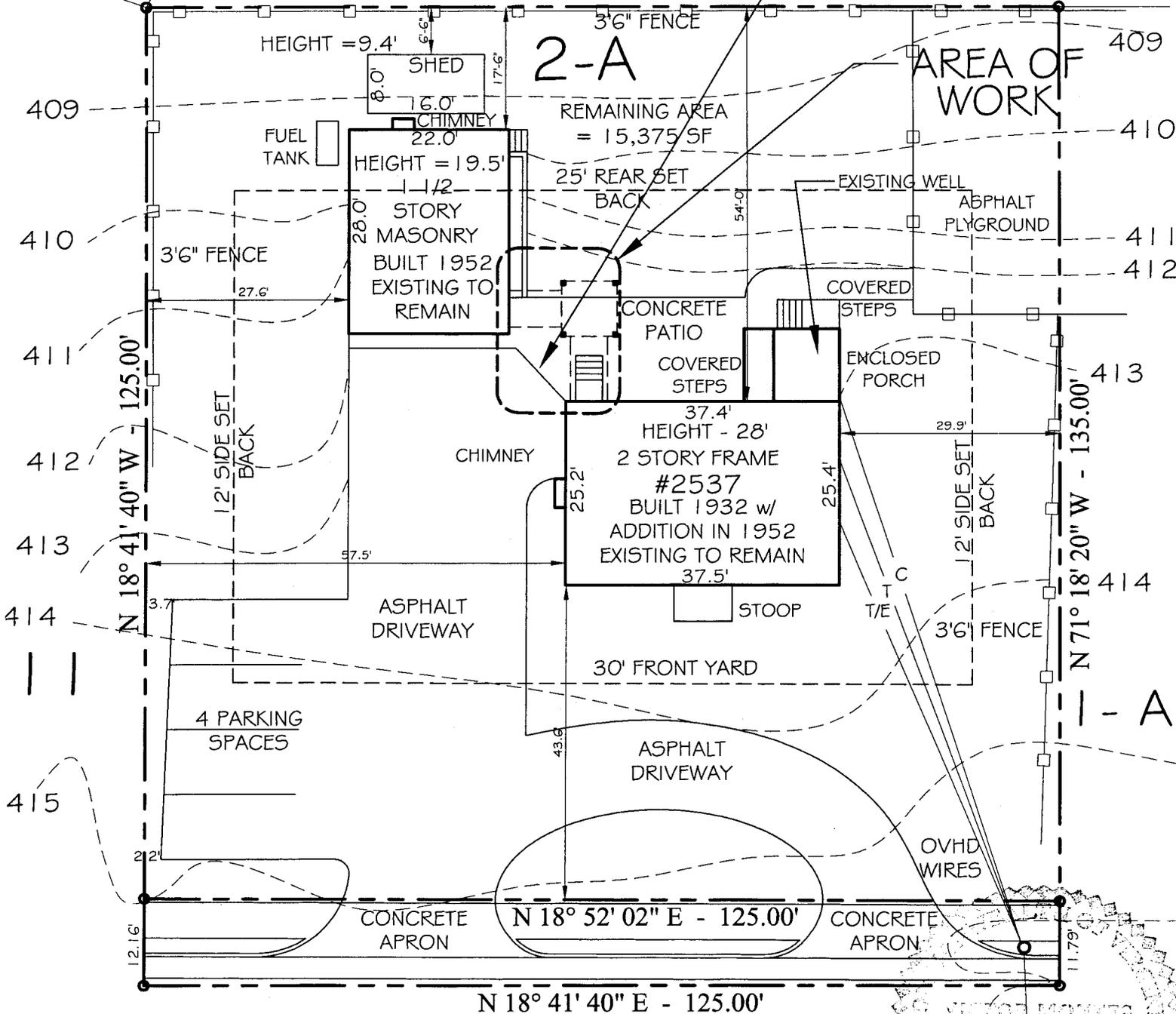
NEW ROOFED CONNECTION

6-A

S 18° 41' 40" W - 125.00'

2-A

AREA OF WORK



- 1 LESS AND EXCEPT 1,497 SF TO THE COMMONWEALTH OF VIRGINIA (D.B.5419, PG 1383)
- 2 THERE IS NO OBSERVABLE EVIDENCE OF GRAVE SITES OR BURIAL GROUNDS ON THE PROPERTY.
- 3 THIS PROPERTY IS NOT LOCATED IN A SPECIAL FLOOD HAZARD AREA.
- 4 THIS PROPERTY IS SERVED BY PUBLIC SEWER AND PRIVATE WELL LOCATED BELOW THE PORCH.
- 5 THE ARCHITECT IS NOT AWARE OF ANY UTILITY EASEMENTS OF 25' OR GREATER AFFECTING THIS PROPERTY.
- 6 ALL IMPROVEMENTS U. O. N. ARE EXISTING.
- 7 THE ARCHITECT IS NOT AWARE OF ANY UTILITY EASEMENTS 25' IN WHITH OR GREATER AFFECTING THIS PROPERTY.

GALLOWES RD - RT 650
 42.5' TO \perp
 TAX MAP 49-2- ((1))-4B
 LOT 2-A DUNN LORING SUBDIVISION
 PROVIDENCE DISTRICT ZONING R-3
 FAIRFAX COUNTY, VIRGINIA

Wh
 3.20.08
 NORTH
 SCALE : 1" = 20'
 MARCH 20, 2008

- 8 MEATS AND BOUNDS DATA OBTAINED FROM A PLAT DATED JUNE 11, 1996 BY KENNETH WHITE OF ALEXANDRIA SURVEYS

WORLEY RESIDENCE HOUSE LOCATION PLAT

LOT 2-A, RESUBDIVISION OF LOTS 1 & 2, PARCEL "B" & PARCEL "A" OF THE PROPERTY OF G. F. WORLEY BEING PART OF LOT 26

LUCARELLI, MONTES & WELLS, P.C.
 6723 WHITTIER AVE, SUITE 100, MCLEAN VIRGINIA PHONE 703 790 9606

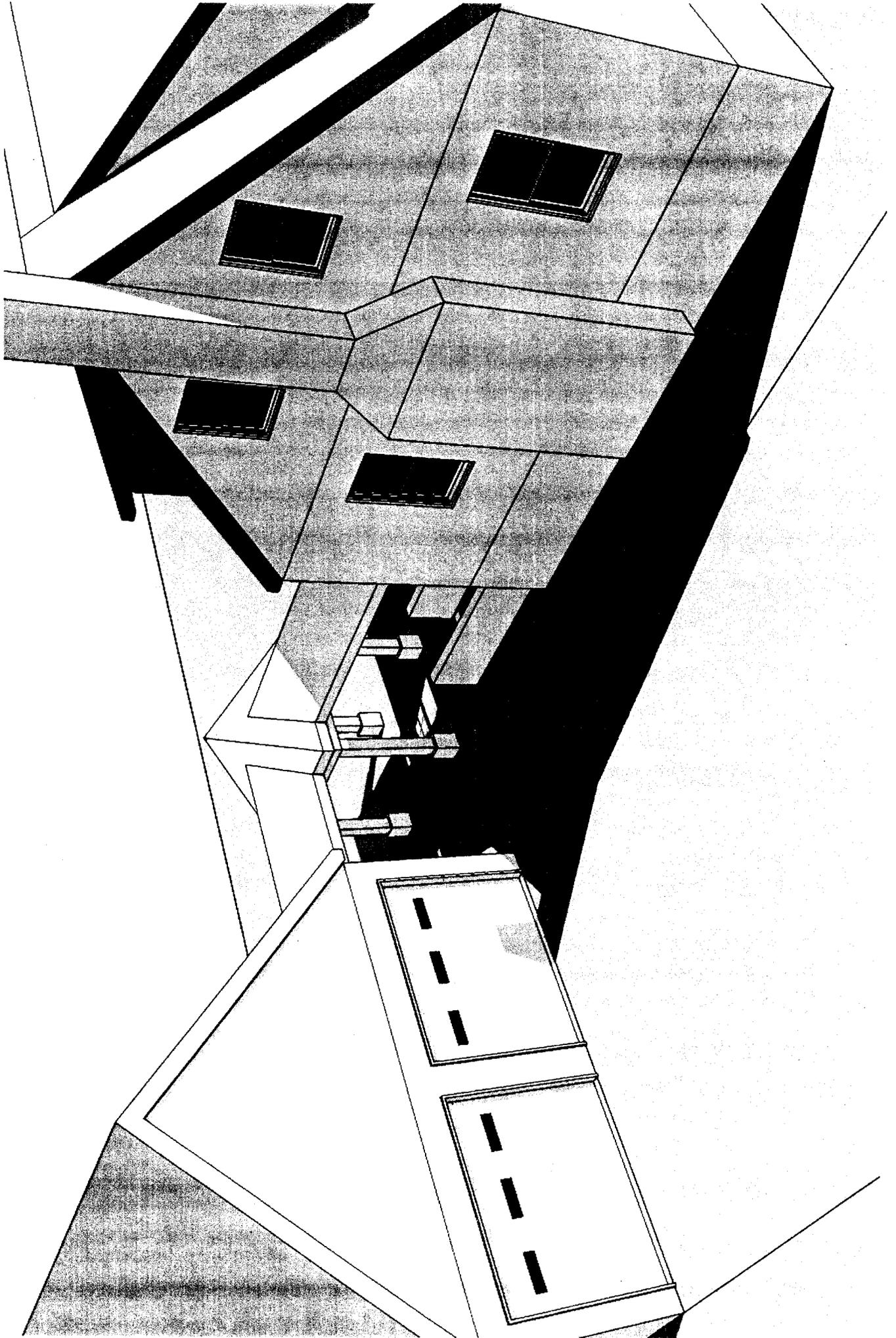
**NOTES FOR PLAT
2537 GALLOWS ROAD
DUNN LORING, VA 22027**

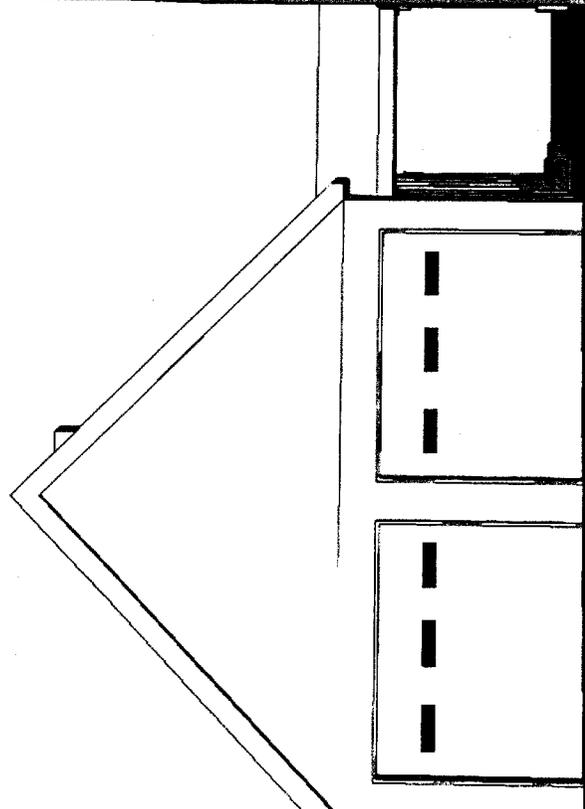
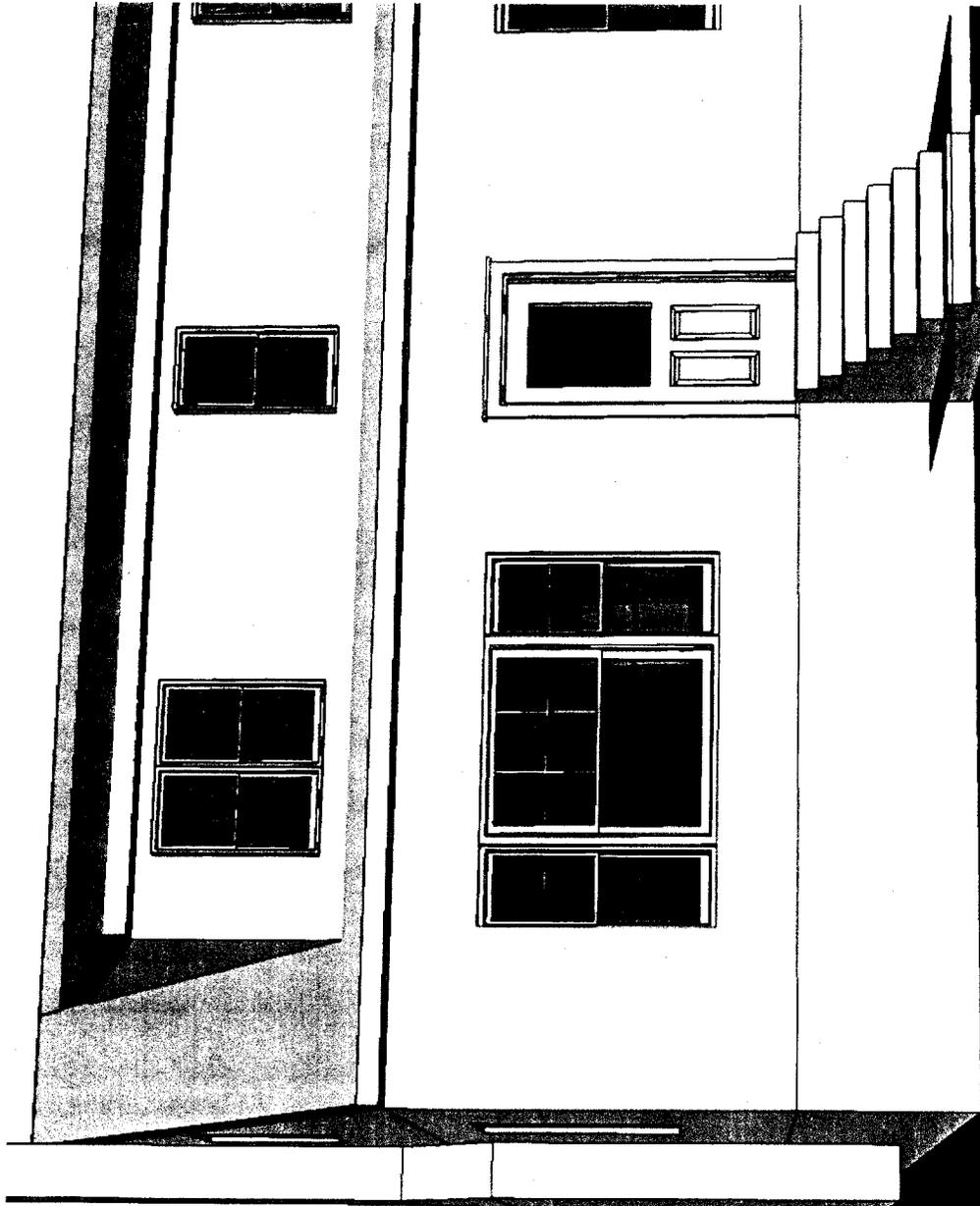
1. TAX MAP 49-2- ((1))-4B
2. ZONED R-3
3. LOT AREA 15, 375 SQUARE FEET
4. SPECIFIED YARD SIZES: R-3 DISTRICT

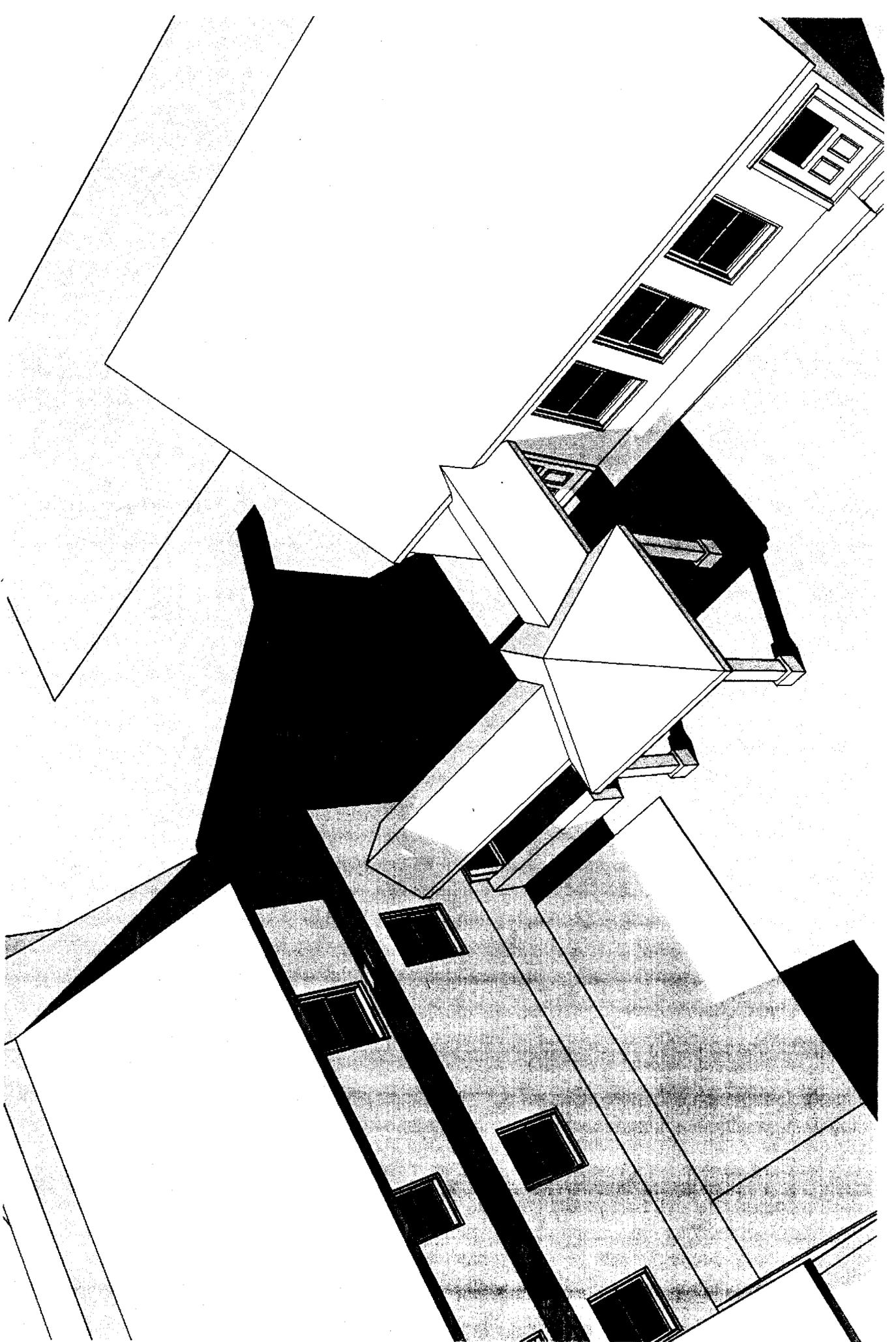
 SIDE 12 FEET
 FRONT 30 FEET
 REAR 25 FEET
5. HEIGHTS, ETC.
 HOUSE 28 FEET
 GARAGE 19.5 FEET -- LOCATED 17 FEET 6 INCHES FROM THE
 LOT LINE
 FENCE 3 FEET 6 INCHES
 SHED 9 FEET 3 INCHES TALL
 6 FEET 6 INCHES FROM LOT LINE
 16 FEET LONG AND 8 FEET WIDE
6. THE PROPERTY IS SERVED BY PUBLIC SEWER; A WELL IS LOCATED
 UNDER THE REAR PORCH, SOUTHEASTERN SECTION
7. THERE IS NO OBSERVABLE EVIDENCE OF GRAVE SITES OR BURIAL
 GROUNDS ON THE PROPERTY.
8. ALL IMPROVEMENTS ON THE MAP ARE EXISTING.
9. THE ARCHITECT IS NOT AWARE OF ANY UTILITY EASEMENTS
 25 FEET IN WIDTH OR GREATER AFFECTING THIS PROPERTY.
10. THERE ARE NO FLOOD PLAINS, FLOOD HAZARD AREAS OR
 RESOURCES PROTECTION AREAS ON THIS PROPERTY.

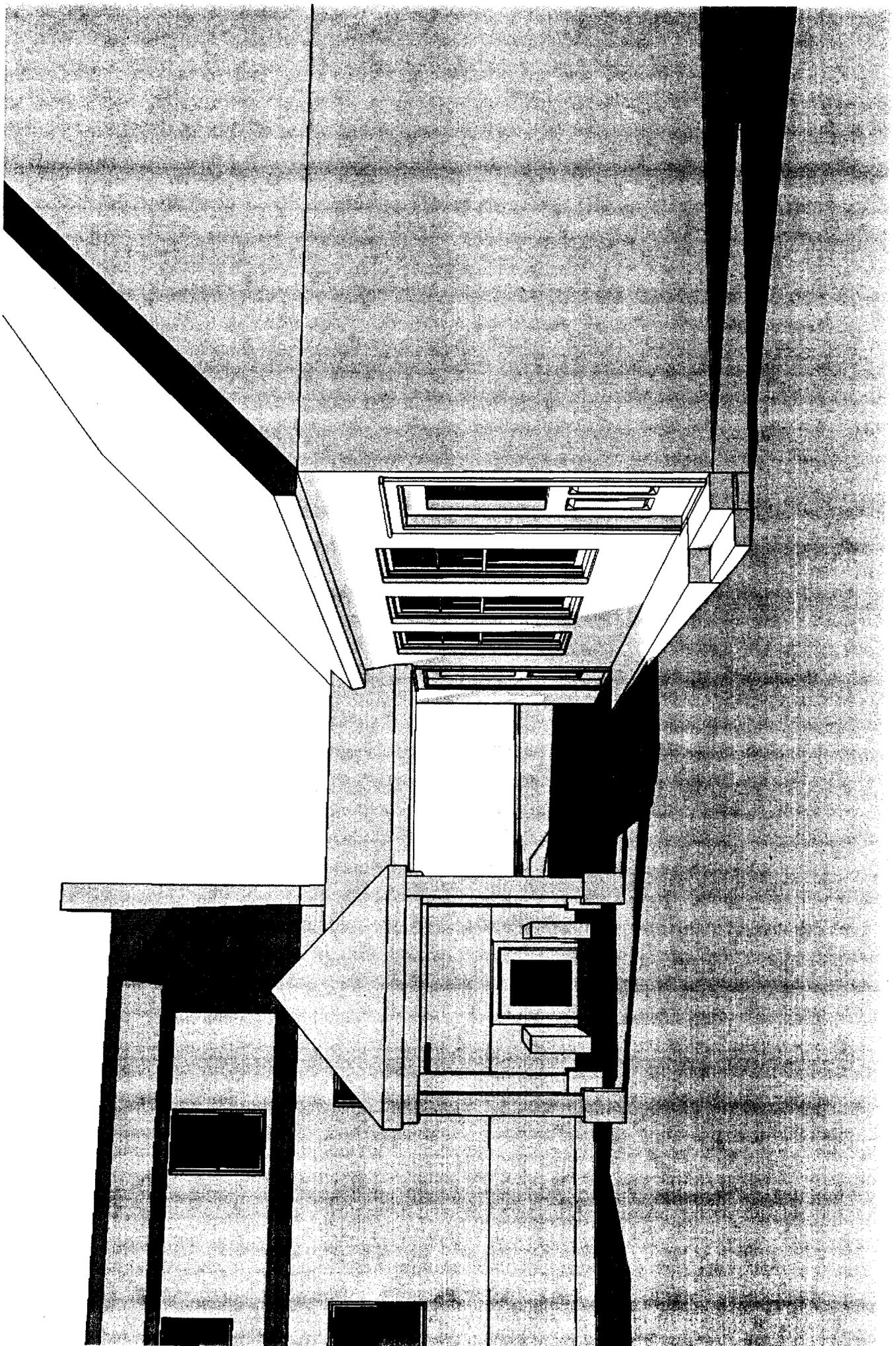
Submitted by Authorized Agent: S/ G. Ray Worley

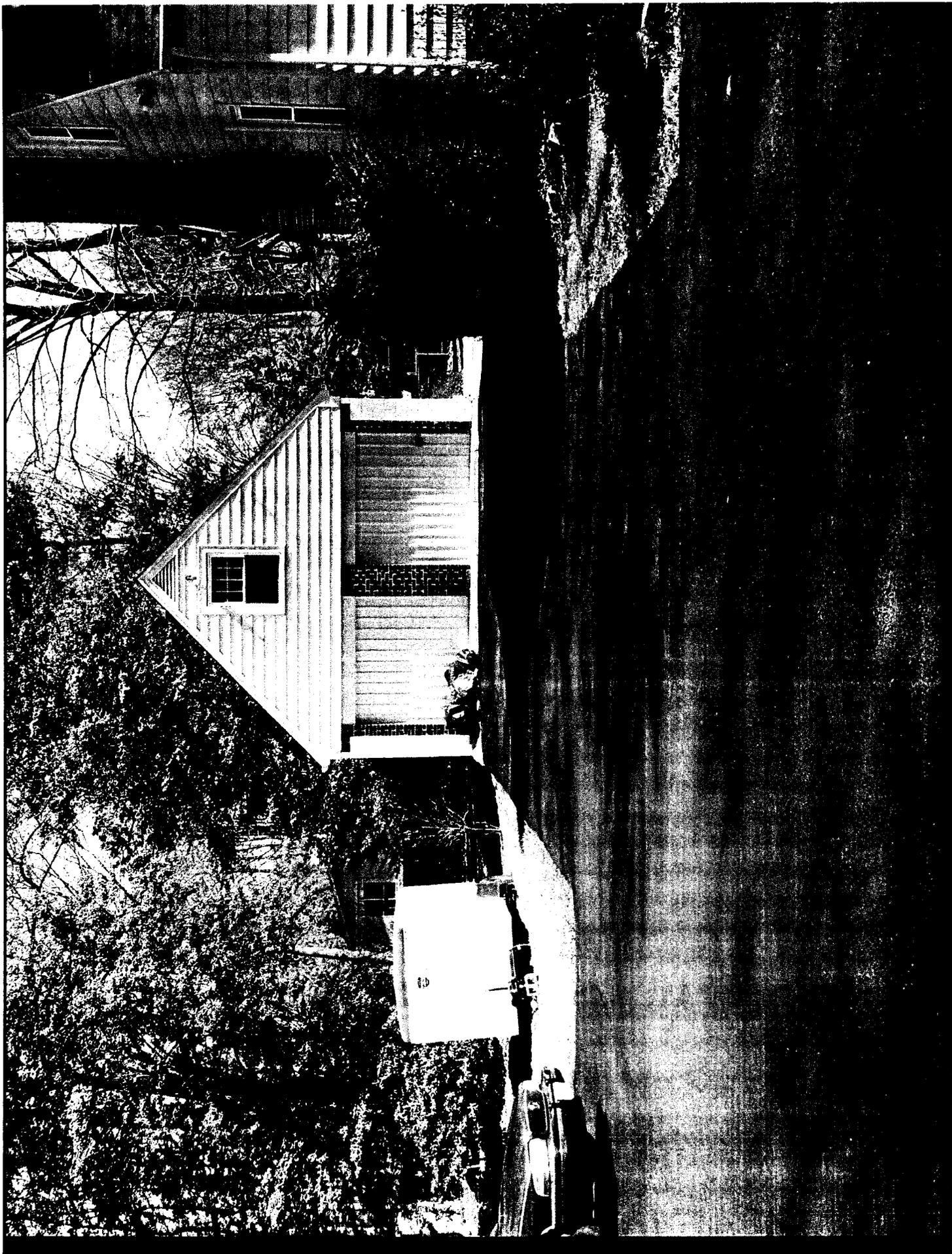
3/18/08

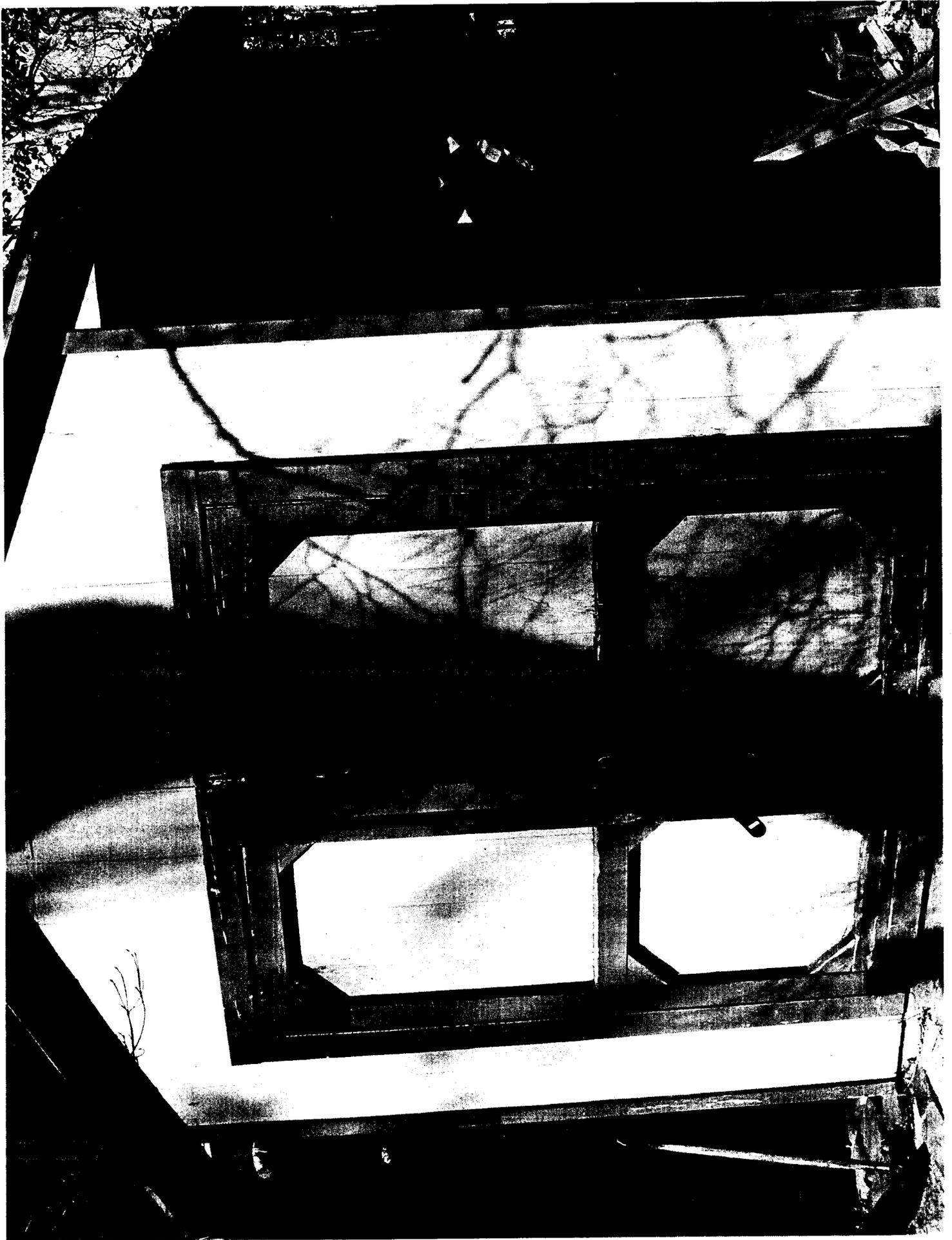


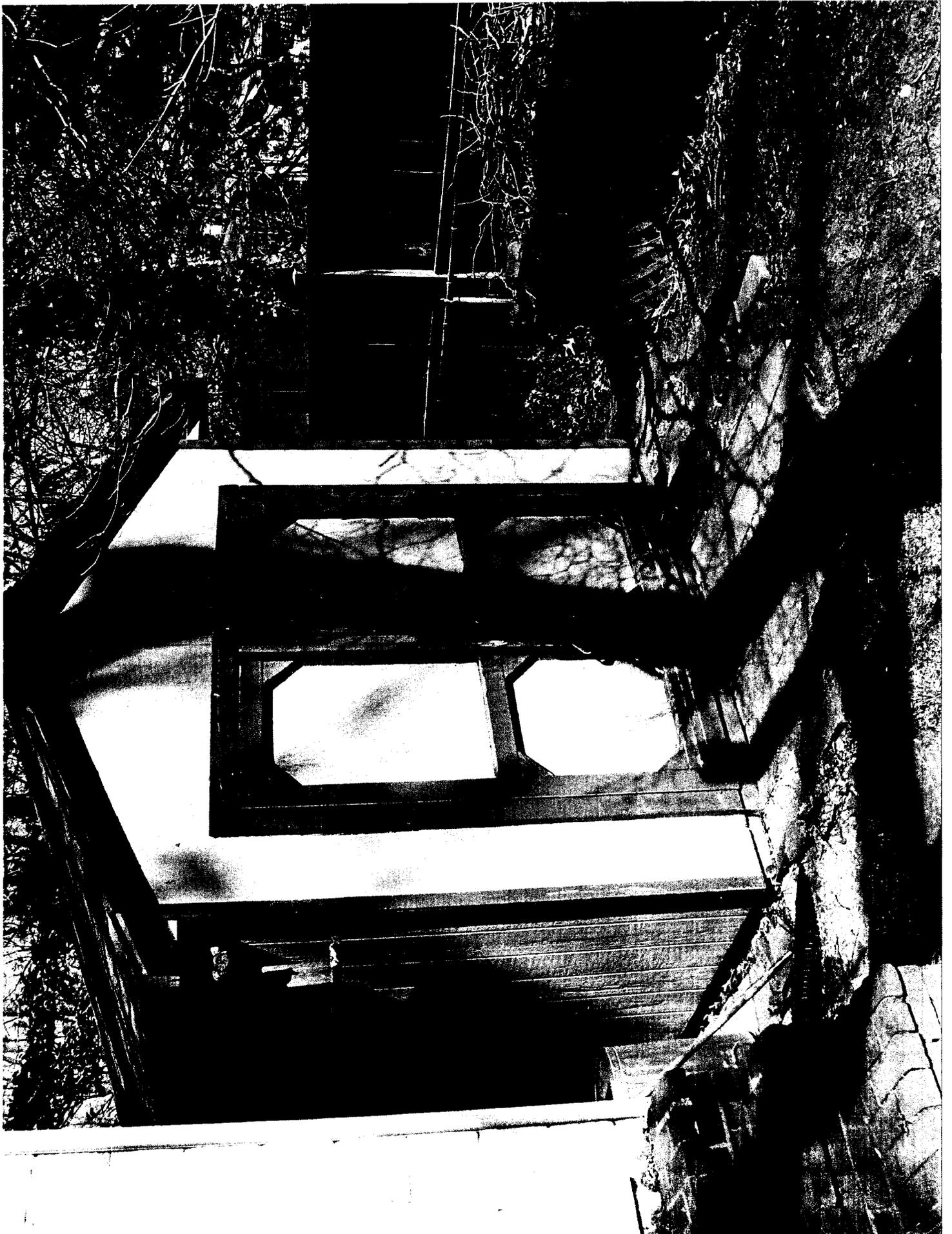


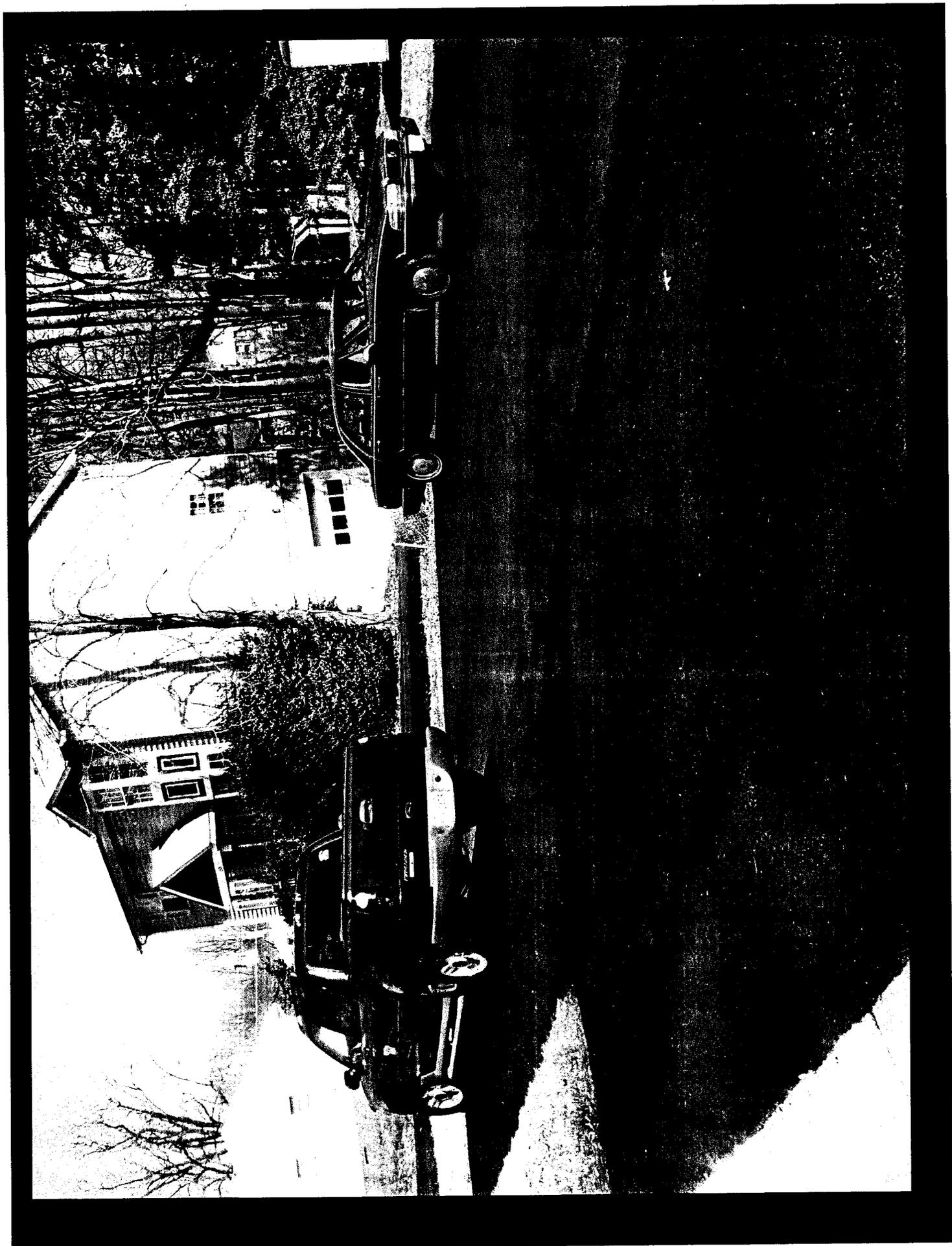












DESCRIPTION OF THE APPLICATION

Special Permit Request: To permit an accessory dwelling unit, and to permit an accessory storage structure (shed) to remain 6.5 feet from the rear lot line. A minimum yard of 9.4 feet is required for the shed, therefore a modification of 2.9 feet is requested. The existing accessory structure which will house the accessory dwelling unit met zoning ordinance requirements at the time it was constructed in 1952.

Size of Principal Dwelling: 2,786 square feet

Size of Accessory Dwelling Unit: 833 square feet

Lot Size: 15,375 square feet

LOCATION AND CHARACTER

Existing Site Description: The subject property is located on Gallows Road north of its intersection with Cottage Street. The property consists of 15,375 square feet, and is developed with a single family detached dwelling, located on the center of the lot, 43.6 feet from Gallows Road. An existing masonry accessory structure, one and one half stories in height, is located adjacent to the dwelling with a shed located to the rear. A circular driveway with two access points runs from Gallows Road alongside the western boundary of the property. The subject property is landscaped in the front yard and contains mature trees throughout the property.

Surrounding Area Description:

Direction	Use	Zoning	Plan
North	Single Family Dwellings	R-3	Residential, 2-3 du/ac
South	Single Family Dwellings	R-3	Residential, 2-3 du/ac
East	Single Family Dwellings	R-3	Residential, 2-3 du/ac
West	Dunn Loring Community Park	R-1	Residential, 2-3 du/ac

BACKGROUND

Site History

County records indicate that the dwelling was constructed in 1932. The structure containing the accessory dwelling unit was constructed in 1952. On July 19, 2006, and in a subsequent letter of August 23, 2006, the applicant received a notice of violation from the Zoning Enforcement Branch of DPZ (Appendix 4) indicating that the investigation of a compliant had found that two separate dwelling units were in existence on the applicant's property. The applicant subsequently filed an appeal to the violation and after discussion with the Zoning Administrative Division elected to defer the Appeal to allow for time to apply for a special permit to allow an accessory dwelling unit. A copy of the staff report is included in Appendix 4.

COMPREHENSIVE PLAN PROVISIONS

Plan Area: Providence Planning District; Area II
Planning Sector: Cedar (V-2)
Plan Map: Residential, 3-4 du/ac

ANALYSIS

Special Permit Plat (Copy at front of staff report)

Title of SP Plat: Worley Residence House Location Plat
Prepared By: Lucarelli, Montes and Wells, P.C.
Dated: March 20, 2008

Proposed Use

The applicant is requesting approval of a special permit for an accessory dwelling unit. The 833 square foot accessory unit is to be located in an existing one and one half story masonry structure separate from the main dwelling which was built in 1952. The accessory dwelling is proposed to be attached to the primary dwelling by a roofed breezeway. The total square footage of the living space of the primary dwelling and the accessory dwelling unit is 3,619 square feet. The accessory dwelling unit comprises 833 square feet or 23% of the total gross floor area of both structures. The applicants, the owners of the property, who are over 55 years old respectively, live in the primary dwelling. The accessory dwelling unit will be occupied by an individual or couple with continued or temporary residency that will assist the applicants with property maintenance and other tasks. They will have a separate entrance on the first floor of the accessory dwelling. The unit will contain a bedroom, kitchen, bathroom and living area. There is parking for up to four vehicles on site. As noted earlier, the existing accessory storage structure (shed) is proposed to remain 6.5 feet from the rear lot line. There are no proposed changes to the exterior of the house or accessory dwelling structure except for the construction of the proposed connecting breezeway.

Land Use Analysis

The Comprehensive Plan recommends residential uses with a density of 3-4 dwelling units per acre. Staff believes the proposed accessory dwelling is in harmony with the Comprehensive Plan recommendations for this site, and there are no design or compatibility issues posed by the development plan.

ZONING ORDINANCE REQUIREMENTS

Special Permit Requirements (See Appendix 6)

- Provision for Approval of Reduction to Minimum Yard Requirements Based on an Error in Building Location (Sect. 8-914)
- General Special Permit Standards (Sect. 8-006)
- Group Standards for All Group 9 Uses (Sect. 8-903)
- Additional Standards for Accessory Dwelling Units (Sect. 8-918)

Summary of Zoning Ordinance Provisions

All applicable standards for the accessory dwelling unit have been satisfied with the proposed development conditions.

CONCLUSIONS

Staff concludes that the subject application for an accessory dwelling unit is in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions with the implementation of the Proposed Development Conditions contained in Appendix 1 of the Staff Report.

RECOMMENDATIONS

Staff recommends approval of the accessory dwelling unit subject to the Proposed Development Conditions in Appendix 1.

It should be noted that it is not the intent of staff to recommend that the Board, in adopting any conditions, relieve the applicant/owner from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

It should be further noted that the content of this report reflects the analysis and recommendations of staff; it does not reflect the position of the Board of Zoning Appeals.

APPENDICES

1. Proposed Development Conditions
2. Affidavit
3. Statement of Justification
4. Notices Of Violation
5. Appeal Staff Report
6. Applicable Zoning Ordinance Provisions

PROPOSED DEVELOPMENT CONDITIONS

June 10, 2008

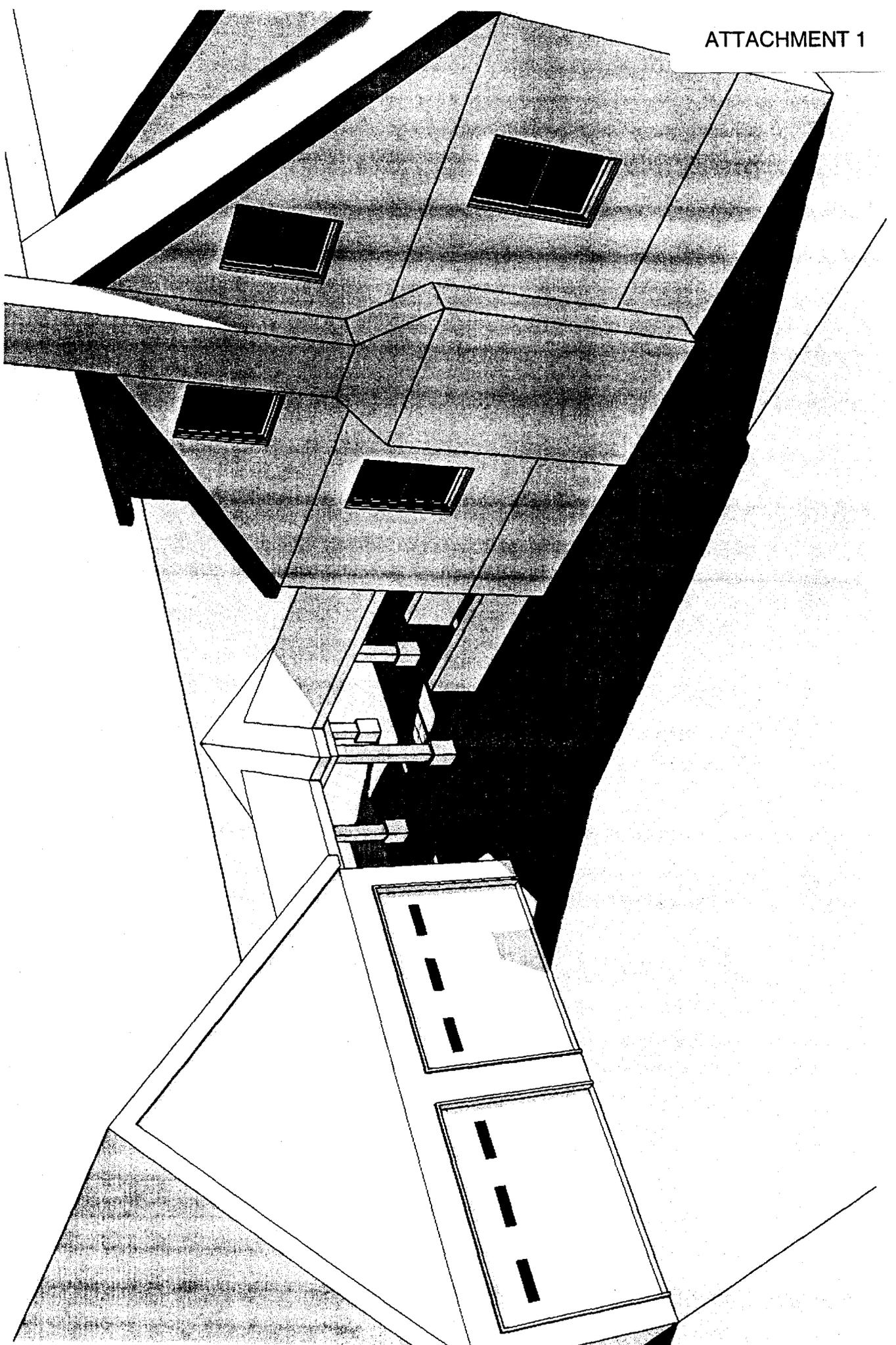
If it is the intent of the Board of Zoning Appeals to approve SP 2008-DR-035 located at Tax Map 49-2 ((1)) 4B, to permit a reduction of minimum yard requirements based on an error in building location and an accessory dwelling unit under Sections 8-914 and 8-918 of the Fairfax County Zoning Ordinance, staff recommends that the Board condition the approval by requiring conformance with the following development conditions.

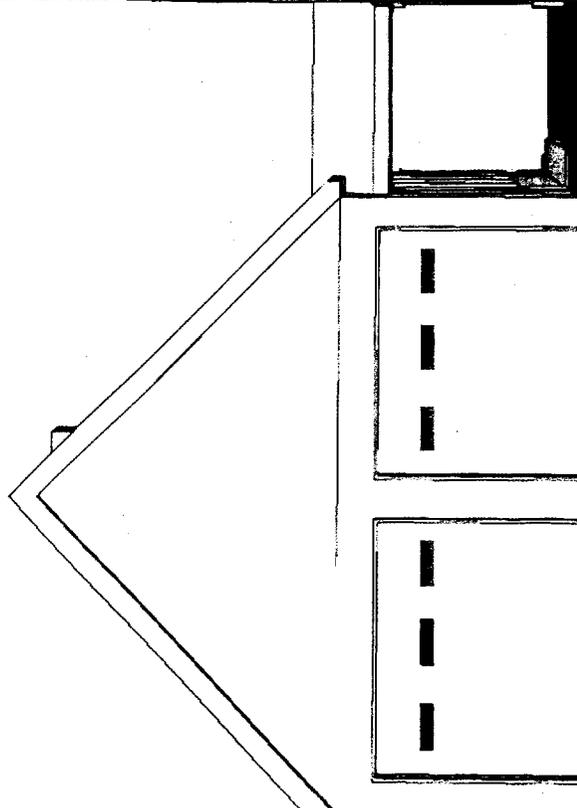
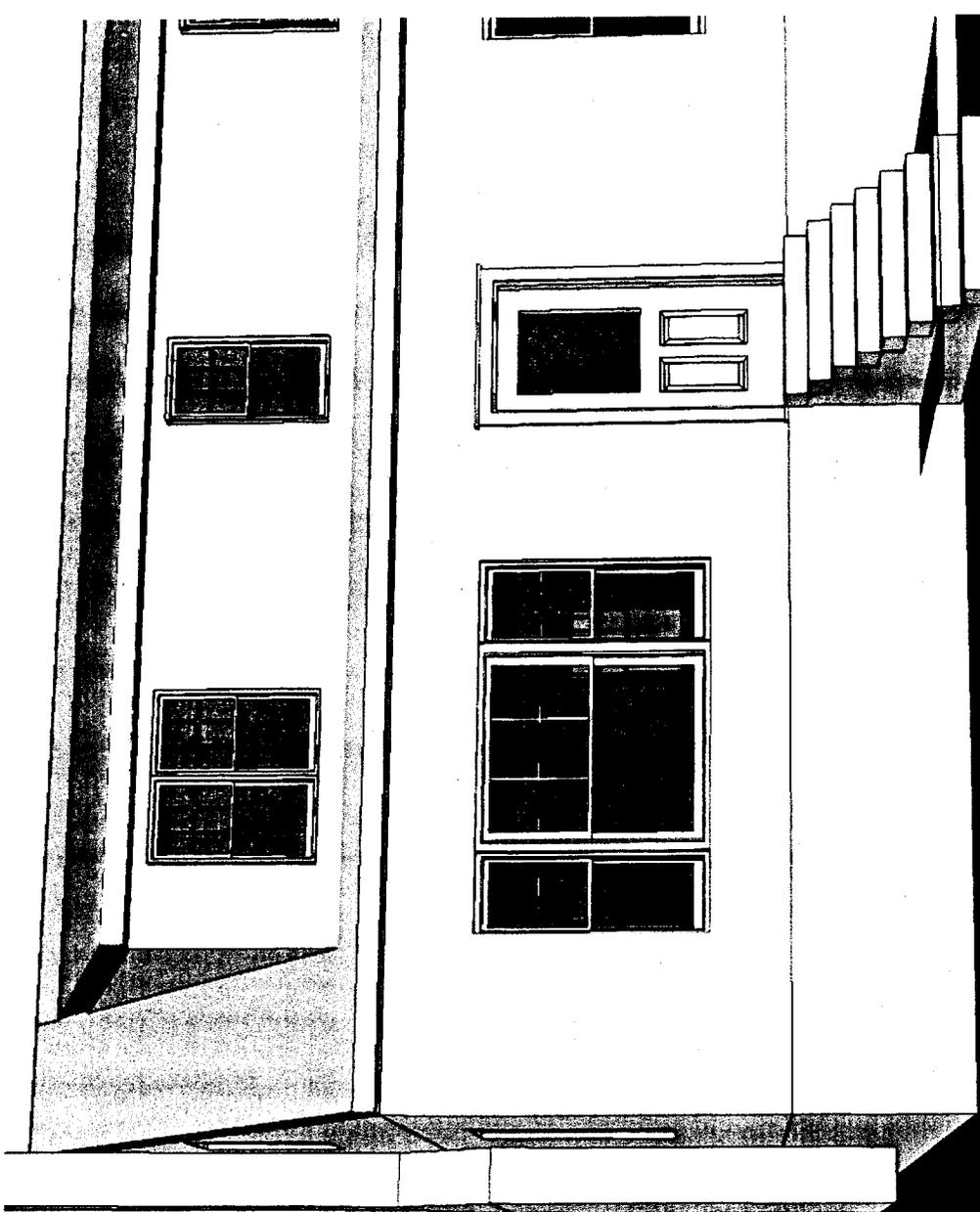
1. This approval is granted to the applicants only, G. Ray Worley, Sr. and Estella C (H.) Worley, and is not transferable without further action of this Board, and is for the location indicated on the application, 2537 Gallows Road (15,375 square feet), and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Lucarelli, Montes and Wells, P.C., dated March 20, 2008 and approved with this application, as qualified by these development conditions.
3. A copy of this special permit SHALL BE POSTED in a conspicuous place on the property of the use and made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. The occupant(s) of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance.
5. The accessory dwelling unit shall contain a maximum of 833 square feet, including a maximum of one bedroom.
6. Provisions shall be made for the inspection of the property by County personnel during reasonable hours upon prior notice and the accessory dwelling unit shall meet the applicable regulation for building, safety, health and sanitation.
7. The accessory dwelling unit shall be approved for a period of five (5) years from the final approval date of the special permit and may be extended for five (5) year periods with prior approval of the Zoning Administrator in accordance with Section 8-012 of the Zoning Ordinance.
8. If the use of the accessory dwelling unit ceases and/or the property is sold or otherwise conveyed, the accessory structure shall be converted to a use permitted by the Zoning Ordinance or if the property is sold or conveyed, a special permit amendment may be submitted to permit the continued use of an accessory dwelling unit.
9. Parking shall be provided as shown on the special permit plat.

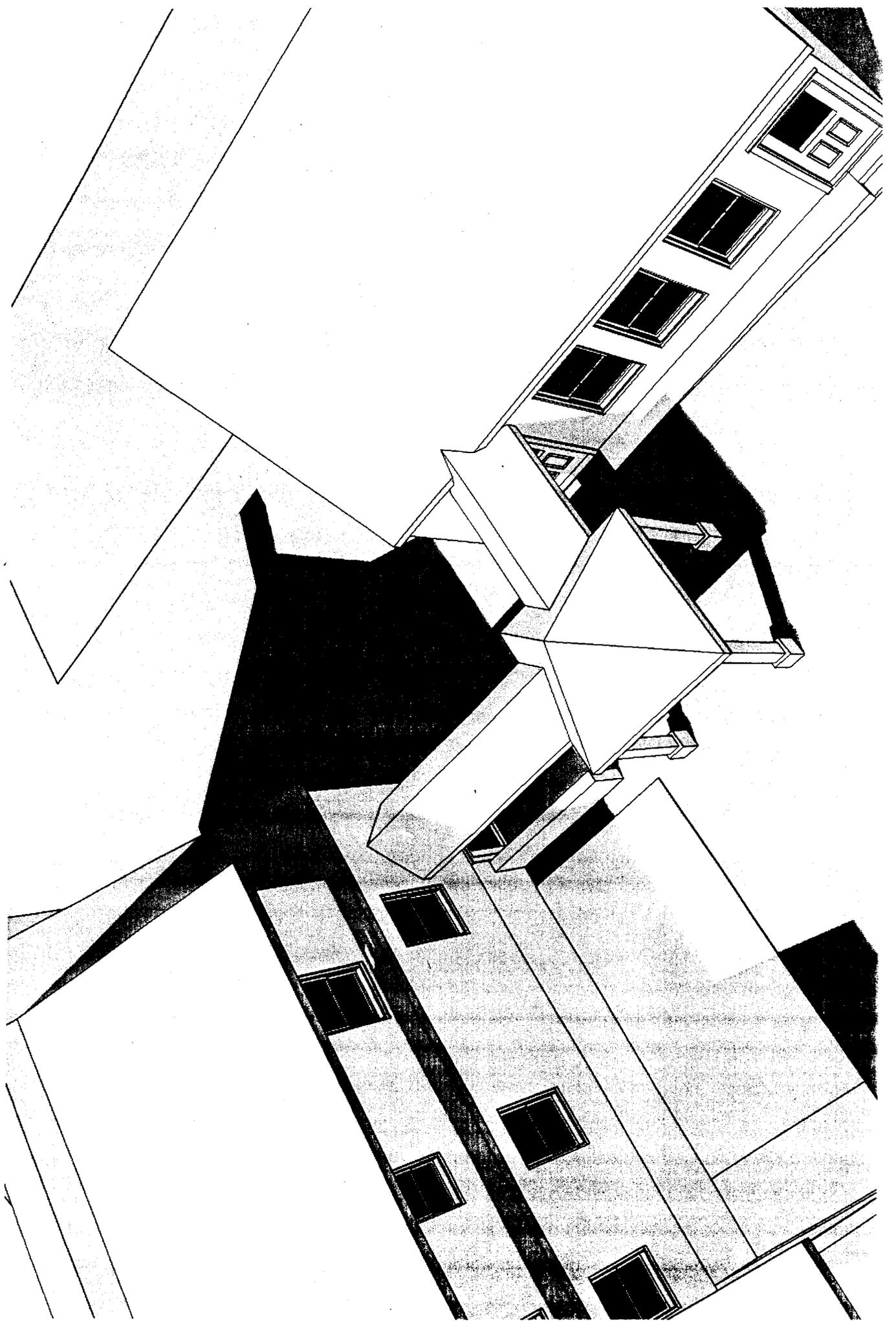
10. Prior to occupancy of the accessory dwelling unit, a breezeway shall be constructed in between the primary dwelling and the accessory dwelling unit in conformance with the architectural renderings and materials included in Attachment 1 to these conditions.

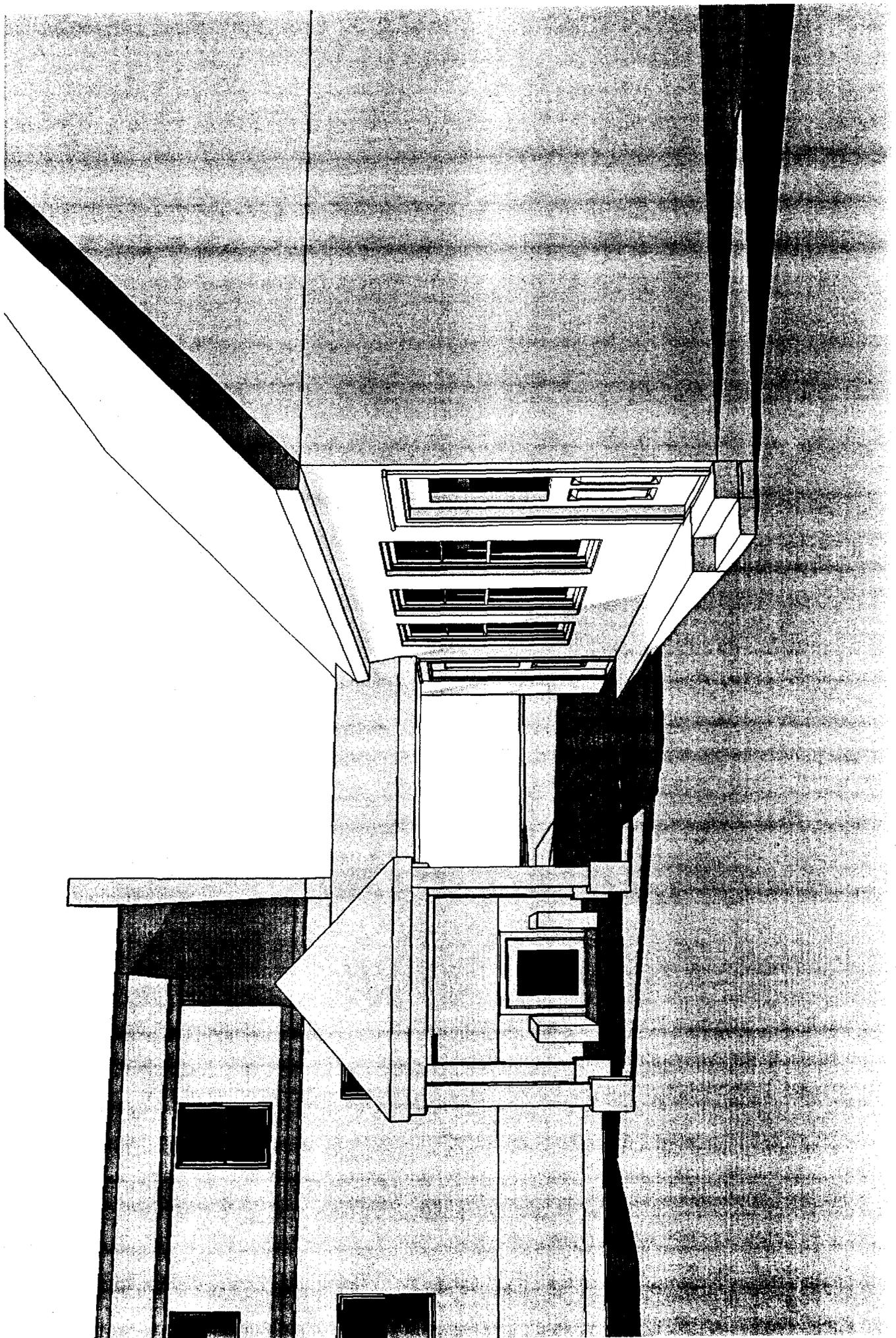
This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless the use has been established as outlined above. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.









Application No.(s): _____
 (county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 3/4/08
 (enter date affidavit is notarized)

I, G. Ray Worley, Authorized Agent do hereby state that I am an
 (enter name of applicant or authorized agent)

(check one) applicant
 applicant's authorized agent listed in Par. 1(a) below 99237

and that, to the best of my knowledge and belief, the following is true:

1(a). The following constitutes a listing of the names and addresses of all **APPLICANTS, TITLE OWNERS, CONTRACT PURCHASERS, and LESSEES** of the land described in the application,* and, if any of the foregoing is a **TRUSTEE,**** each **BENEFICIARY** of such trust, and all **ATTORNEYS** and **REAL ESTATE BROKERS**, and all **AGENTS** who have acted on behalf of any of the foregoing with respect to the application:

(NOTE: All relationships to the application listed above in **BOLD** print must be disclosed. Multiple relationships may be listed together, e.g., **Attorney/Agent, Contract Purchaser/Lessee, Applicant/Title Owner**, etc. For a multiparcel application, list the Tax Map Number(s) of the parcel(s) for each owner(s) in the Relationship column.)

NAME (enter first name, middle initial, and last name)	ADDRESS (enter number, street, city, state, and zip code)	RELATIONSHIP(S) (enter applicable relationships listed in BOLD above)
G. Ray Worley	2537 Galloway Rd DUAN LORING VA 22027	Title owner
Estelle C. (H) Worley		Agent
		Title Owner

(APPLICANTS/TITLE OWNERS)

(check if applicable) There are more relationships to be listed and Par. 1(a) is continued on a "Special Permit/Variance Attachment to Par. 1(a)" form.

* In the case of a condominium, the title owner, contract purchaser, or lessee of 10% or more of the units in the condominium.
 ** List as follows: Name of trustee, Trustee for (name of trust, if applicable), for the benefit of: (state name of each beneficiary).

Application No.(s): _____
(county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 3/4/08
(enter date affidavit is notarized)

99237

1(b). The following constitutes a listing*** of the **SHAREHOLDERS** of all corporations disclosed in this affidavit who own 10% or more of any class of stock issued by said corporation, and where such corporation has 10 or less shareholders, a listing of all of the shareholders:

(NOTE: Include **SOLE PROPRIETORSHIPS, LIMITED LIABILITY COMPANIES, and REAL ESTATE INVESTMENT TRUSTS** herein.)

N/A

CORPORATION INFORMATION

NAME & ADDRESS OF CORPORATION: (enter complete name, number, street, city, state, and zip code)

N/A

DESCRIPTION OF CORPORATION: (check one statement)

- There are 10 or less shareholders, and all of the shareholders are listed below.
- There are more than 10 shareholders, and all of the shareholders owning 10% or more of any class of stock issued by said corporation are listed below.
- There are more than 10 shareholders, but no shareholder owns 10% or more of any class of stock issued by said corporation, and no shareholders are listed below.

NAMES OF SHAREHOLDERS: (enter first name, middle initial, and last name)

N/A

(check if applicable) There is more corporation information and Par. 1(b) is continued on a "Special Permit/Variance Attachment 1(b)" form.

*** All listings which include partnerships, corporations, or trusts, to include the names of beneficiaries, must be broken down successively until (a) only individual persons are listed or (b) the listing for a corporation having more than 10 shareholders has no shareholder owning 10% or more of any class of stock. *In the case of an APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE* of the land that is a partnership, corporation, or trust, such successive breakdown must include a listing and further breakdown of all of its partners, of its shareholders as required above, and of beneficiaries of any trusts. Such successive breakdown must also include breakdowns of any partnership, corporation, or trust owning 10% or more of the APPLICANT, TITLE OWNER, CONTRACT PURCHASER or LESSEE* of the land. Limited liability companies and real estate investment trusts and their equivalents are treated as corporations, with members being deemed the equivalent of shareholders; managing members shall also be listed.* Use footnote numbers to designate partnerships or corporations, which have further listings on an attachment page, and reference the same footnote numbers on the attachment page.

Application No.(s): _____
(county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 3/4/08
(enter date affidavit is notarized)

99237

1(c). The following constitutes a listing*** of all of the **PARTNERS**, both **GENERAL** and **LIMITED**, in any partnership disclosed in this affidavit:

PARTNERSHIP INFORMATION

PARTNERSHIP NAME & ADDRESS: (enter complete name, number, street, city, state, and zip code)

(check if applicable) The above-listed partnership has no limited partners.

NAMES AND TITLE OF THE PARTNERS (enter first name, middle initial, last name, and title, e.g. **General Partner, Limited Partner, or General and Limited Partner**)

N/A

(check if applicable) There is more partnership information and Par. 1(c) is continued on a "Special Permit/Variance Attachment to Par. 1(c)" form.

*** All listings which include partnerships, corporations, or trusts, to include the names of beneficiaries, must be broken down successively until: (a) only individual persons are listed or (b) the listing for a corporation having more than 10 shareholders has no shareholder owning 10% or more of any class of stock. *In the case of an APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE* of the land that is a partnership, corporation, or trust, such successive breakdown must include a listing and further breakdown of all of its partners, of its shareholders as required above, and of beneficiaries of any trusts. Such successive breakdown must also include breakdowns of any partnership, corporation, or trust owning 10% or more of the APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE* of the land. Limited liability companies and real estate investment trusts and their equivalents are treated as corporations, with members being deemed the equivalent of shareholders; managing members shall also be listed.* Use footnote numbers to designate partnerships or corporations, which have further listings on an attachment page, and reference the same footnote numbers on the attachment page.

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SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 3/4/08
(enter date affidavit is notarized)

99237

1(d). One of the following boxes **must** be checked:

In addition to the names listed in Paragraphs 1(a), 1(b), and 1(c) above, the following is a listing of any and all other individuals who own in the aggregate (directly and as a shareholder, partner, and beneficiary of a trust) 10% or more of the **APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE*** of the land:

N/A

Other than the names listed in Paragraphs 1(a), 1(b), and 1(c) above, no individual owns in the aggregate (directly and as a shareholder, partner, and beneficiary of a trust) 10% or more of the **APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE*** of the land.

2. That no member of the Fairfax County Board of Zoning Appeals, Planning Commission, or any member of his or her immediate household owns or has any financial interest in the subject land either individually, by ownership of stock in a corporation owning such land, or through an interest in a partnership owning such land.

EXCEPT AS FOLLOWS: (NOTE: If answer is none, enter "NONE" on the line below.)

NONE

(check if applicable) There are more interests to be listed and Par. 2 is continued on a "Special Permit/Variance Attachment to Par. 2" form.

Application No.(s): _____
(county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 3/4/08
(enter date affidavit is notarized)

99237

3. That within the twelve-month period prior to the public hearing of this application, no member of the Fairfax County Board of Zoning Appeals, Planning Commission, or any member of his or her immediate household, either directly or by way of partnership in which any of them is a partner, employee, agent, or attorney, or through a partner of any of them, or through a corporation in which any of them is an officer, director, employee, agent, or attorney or holds 10% or more of the outstanding bonds or shares of stock of a particular class, has, or has had any business or financial relationship, other than any ordinary depositor or customer relationship with or by a retail establishment, public utility, or bank, including any gift or donation having a value of more than \$100, singularly or in the aggregate, with any of those listed in Par. 1 above.

EXCEPT AS FOLLOWS: (NOTE: If answer is none, enter "NONE" on line below.)

NONE

(NOTE: Business or financial relationships of the type described in this paragraph that arise after the filing of this application and before each public hearing must be disclosed prior to the public hearings. See Par. 4 below.)

(check if applicable) There are more disclosures to be listed and Par. 3 is continued on a "Special Permit/Variance Attachment to Par. 3" form.

4. That the information contained in this affidavit is complete, that all partnerships, corporations, and trusts owning 10% or more of the APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE* of the land have been listed and broken down, and that prior to each and every public hearing on this matter, I will reexamine this affidavit and provide any changed or supplemental information, including business or financial relationships of the type described in Paragraph 3 above, that arise on or after the date of this application.

WITNESS the following signature:

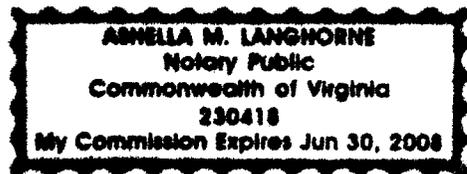
(check one) G. Ray Worley, Sr. Auth Agent
 Applicant Applicant's Authorized Agent

G. Ray Worley, Sr. Authorized Agent
(type or print first name, middle initial, last name, and title of signee)

Subscribed and sworn to before me this 4th day of March, 2008, in the State/Comm. of Virginia, County/City of Fairfax.

Arabella M. Langhorne
Notary Public

My commission expires: June 30, 2008



**RE: 2537 Gallows Road
Dunn Loring, VA 22027**

**STATEMENT OF JUSTIFICATION,
DISCLOSAL OF PERTINENT FACTS
REQUEST FOR WAIVERS, ETC.**

3/11/08

Revised

This is an application for a Special Permit for an Accessory Developmental Unit and an application for a Special Permit for an Error in Building Location.

I. Application for a Special Permit for an Accessory Development Unit primarily under Section 8-918 of the Building Code for the house located at 2537 Gallows Road, Dunn Loring, Virginia, 22027, Providence District, Fairfax County, Virginia.

Also considered are: Paragraph 17 of Sect. 8-901, Special Permit Use; Sect. 8.918 Additional Standards for Accessory Dwelling Units, and Paragraph 1 of Section 10.104, Location Requirements. The applicant seeks approval for plans to construct a qualifying connecting walkway with roof, between two existing structures to fulfill requirements of Paragraph 1 of Section 10-104 Location Requirements (Accessory Uses. . . .).

1. Purpose:

A primary purpose is to connect the two structures—a house and a garage—in a way to qualify for consideration as a unified structure, with a purpose in mind of permitting relatives and other select person(s) to live in the structure with an understanding that said person(s) will also assist the residents of the main structure who are qualifying senior citizens, over 55 years of age, with tasks that may require ability to lift and transport weighty materials, and other assistive responsibilities, such as mowing the lawn, snow blowing, moving items, or other needs as they may arise, including other personal or related activities as need may arise.

2. Hours of operation.

Since the proposed use is residential, there are no qualifying hours of operation.

3/4. Estimated number of persons involved.

It is anticipated that the additional residents will be a married couple or perhaps two compatible persons with continuing or temporary residency.

5. Estimate of traffic impact on the proposed use.

There should be little or no significant impact of traffic. It is anticipated that there will be no more than two additional cars involved, and in some instances a resident may use the Metro which is approximately three blocks from our house. There is no anticipation of drawing people to the site, except for occasional visitors.

EXISTING PARKING, ORIGINALLY DEVELOPED IN 1952-53 IN ASSOCIATION WITH USE OF THE PROPERTY AS MRS. WORLEYS PRIMARY SCHOOL, should be sufficient—six spaces, with room for more overflow parking. NOTE SIX PARKING SPACES, WHICH SHOULD BE MORE THAN SUFFICIENT.

SPECIAL NOTE: IN 1952, WHEN THE SUBJECT BUILDINGS WAS BUILT, IT WAS SITED ON A LARGER PARCEL/LOT OF ABOUT 4.9 ACRES AT THE TIME THE PROPERTY WAS FURTHER DEVELOPED. HAD IT BEEN DEEMED GERMANE, IT WOULD HAVE BEEN POSSIBLE TO HAVE DESIGNATED THE GARAGE AS AN ACCESSORY DWELLING UNIT AT THAT TIME. APPARENTLY, IT WAS NOT.

WHEN THE 4.9 ACRE LOT WAS SUBDIVIDED IN THE EARLY 1960'S, THE SUBDIVISION PLAT AS APPROVED ACCEPTED THE SITING OF THE GARAGE IN ITS PRESENT LOCATION.

6. Vicinity or general area to be served by this use.

The property is located in the Providence District, the Dunn Loring area—part of the original Dunn Loring subdivision, and is approximately nine-tenths of a mile from Merrifield, located to the south, about two blocks north of the Dunn Loring/Merrifield Metro Station, and about three miles south of Tysons. It is a predominantly residential area, with four churches also located in the area, and the Dunn Loring Center—an administrative school building, about .9ths of a mile away.

7. Description of existing façade and architecture of the proposed new building or subdivision.

7.1 The building proposed to be used for an accessory dwelling was originally designed as a garage and is one and one-half stories, served by plumbing capability installed at the time of erection in 1952. The house is a two story modified cape cod with a full finished basement and a finished, heated back porch.

7.2 Petitioners propose connecting the garage to the main dwelling by a connecting roofed structure, as sketched on an accompanying drawing, but seeking a further provision to modify the design as construction develops, based upon provisions in the building code with the objective of options in locating supporting posts and the manner and elevation of attaching the roofed structure to the house and the garage.

8. Hazardous materials.

There are no known hazardous building materials or other toxic substances identified at the site.

9. A statement about conformity of the property to pertinent requirements.

9.1 The use of the property is deemed to be generally conforming to the residential character of the neighborhood, having been constructed in 1932, 1942, and 1952 when the two structures—house and garage--were situated on a lot of approximately 4.9 acres, more or less—which, if such condition had required seeking a Special Permit, the circumstances would have qualified for a Special Use Permit for independent structures even under today’s more stringent ordinance.

The Applicants were surprised to learn that the existing use was not a conforming use, or at least not a grandfathered use, and thus were constrained to take this action to alter the structural relationship between the two structures and to seek a Special Use Permit.

COMMENTS ON THE PUBLIC POLICY ISSUES:

Applicants speculate that there are many homes with a Beverage Bar offering similar amenities, or with an in-law suite, but which have not been identified and qualified under a special use permit.

The question is: ARE THE PRESENT ORDINANCES AND DIRECTIVES OUT OF DATE AND NOT IN KEEPING WITH THE CHANGING NEEDS OF THE AREA??

Current requirements, considering the challenge of transportation in our area and the strident demands to construct a Metro link to Dulles and a significant inattention to extending Metro within the I-66 right of way to Manassas and beyond, seem patently inappropriate in light of the great demands for accessible and close in residential capability.

An illustration of great demand for dwelling spaces are the newly developed and prevailing stacked “Sardine Towers” near Metro stops. Also pending is an additional 1300 structured dwelling units, I. E. “Sardine Towers # 2 or #3,” about ½ mile away in the Dunn Loring/Merrifield Metro area.

9.2 The Applicants do note that some of the existing parking on the subject lot is within 2-3 feet of a lot line on the Northern boundary, and that the Garage structure is 17 feet six inches from a rear lot line. This is a preexisting condition prior to our purchase. The shed is about 6 feet six inches from the rear lot line.

APPLICANTS WILL ADDRESS THE LOCATION OF THE SHED IN THE SECOND PART OF THE BROADER APPLICATION.

As noted above, when the original property of 4.9 +/- acres was subdivided in the early 1960's, these two conditions—location of shed and parking lot for 4 spaces some 2 or so feet from the property line—were pre-existent and the Applicants can only infer that these two conditions were noted and accepted within the subdivision plan, approved by the Board of Supervisors, and thus tacitly are grandfathered in as part of the sub-division process. If not, then Applicants herewith ask for appropriate action dealing with these two items, plus any concern about the shed's proximity to the rear lot line. Applicants submit herewith as corroborating information about the permitted use of the property as a Primary School a copy of a permit granted to Mrs. Worley's Primary School as evidence that such use as described herein was acknowledged by a governmental authority as being a permitted use in 1966-1967. An operator for many years of a similar type school has no recollection of any permit requirement other than the type permit cited here.

9.3 Applicant(s) also affirm that the property has a drilled well, with the casing located under an existing porch area on the back of the house. Under prevailing practices, it is fully accessible. (When originally developed, it was surrounded by an open porch with a handle for pumping.)

9.4 If there are any other unknown, unapparent, or obscure interlocking requirements in the Ordinance or other regulations of which the Applicants are not aware, Applicant(s) hereby request reasonable accommodation of any non-major conditions of ordinances, regulations, standards, and/or other unknown conditions.

9.5 To attest to the attitude and position of the neighbors, applicant will submit letters or affidavits from neighbors and abutting property owners attesting that the prior use of the property hereto has not been offensive or disruptive, and that the pattern of behavior of the owners and tenants has been acceptable and that these neighbors, by their letters, countenance this application.

10. The Authorized Agent attests that the measurements involved in computing the ratio of livable space in both structures is as follows.

House: 2,785.89 square feet

Cottage: 832.983 square feet

The ratio of cottage to house is computed at .30 percent.

The house includes finished living space on three floors and that of a porch that is enclosed and heated, with storm windows.

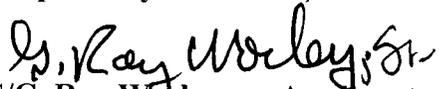
The cottage includes space on the main floor and an auxiliary room on the second floor, with storm windows and heated.

II. Application for a Special Permit regarding an Error in Building Location based upon Section 8-914, requesting that existing shed, which is located 6'6" from the rear lot line instead of the required 9' 3", be permitted to remain in its present location.

- 1. The error exceeds ten (10) percent of the measurement involved.**
- 2. The noncompliance was done in good faith or through no fault of the current property owner, and was in place when the current property owners took title to the property. The former property owner is deceased.**
- 3. Such reduction in the distance between the rear lot line and the existing shed will not impair the use and the intent of this Ordinance, and**
- 4. It will not be detrimental to the use and enjoyment of other property and public streets, and**
- 5. It will not create and an unsafe condition with respect to both other property and public streets, and**
- 6. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owners.**
- 7. The reduction will not result in an increase in density or floor area ratio from that permitted for the applicable zoning district.**
- 8. The applicant requests that with the granting of the reduction of the provisions of this Section of the code, the action of the BZA granting reasonable relief requested shall constitute an action deeming the shed in question to be a lawful building.**

The Applicants through their authorized agent seek approval of both of the above referenced requests under the governing ordinances of the County of Fairfax.

Respectfully submitted,


S/G. Ray Worley, an Applicant and Authorized Agent for the Applicants.

Attachments: Copy of Permit for Mrs. Worley's Primary School for 1966-67



County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

August 23, 2006

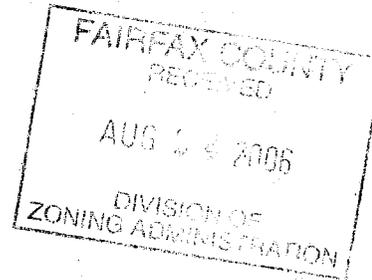
NOTICE OF VIOLATION

CERTIFIED MAIL

Return Receipt Requested

Receipt # 7005 1820 0002 9285 9963

Ray G. Worley, Sr.
Estella C. Worley
2537 Gallows Road
Dunn Loring, Virginia 22027



Re: 2537 Gallows Road
Dunn Loring, Lot 2A of Pt. Lot 26
Tax Map Ref: 49-2 ((1)) 4B
Zoning District: R-3

Dear Mr. and Mrs. Worley:

The purpose of this letter is to rescind and reissue the July 19, 2006 Notice of Violation. It is noted that this Notice of Violation supersedes the July 19, 2006 Notice of Violation. Zoning inspections and conversations on June 15, 2006, and June 22, 2006, revealed that there are two separate dwelling units located at 2537 Gallows Road, which have been designed as two separate independent living facilities. There is one dwelling in the house and another dwelling unit located in the detached garage, each of which contains an improved space consisting of cooking facilities, bathroom(s), and bedroom(s).

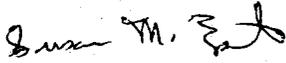
A dwelling unit is defined in Part 3 of Article 20 of the Fairfax County Zoning Ordinance as:

One (1) or more rooms in a residential building or residential portion of a building which are arranged, designed, used, or intended for use as a complete, independent living facility which includes permanent provisions for living, sleeping, eating, cooking and sanitation. Occupancy shall be in accordance with the provisions of Sect. 2-502.

Ray G. Worley, Sr.
Estella C. Worley
August 23, 2006
Page 3

Should you have any questions or need additional information, please do not hesitate to contact me at (703) 324-1388 or (703) 324-1300.

Sincerely,



Susan M. Epstein
Senior Zoning Inspector

SME/seg



County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

July 19, 2006

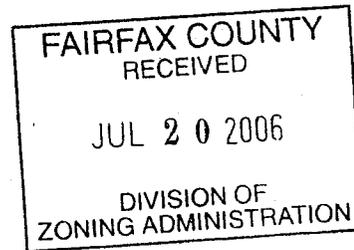
NOTICE OF VIOLATION

CERTIFIED MAIL

Return Receipt Requested

Receipt #7005 1820 0002 9285 9949

Ray G. Worley, Sr.
Estella C. Worley
2537 Gallows Road
Dunn Loring, Virginia 22027



Re: 2537 Gallows Road
Dunn Loring, Lot 2A of Pt. Lot 26
Tax Map Ref: 49-2 ((1)) 4B
Zoning District: R-3

Dear Mr. and Mrs. Worley:

Zoning inspections and conversations on June 15, 2006, and June 22, 2006, revealed that the dwelling unit located at 2537 Gallows Road has been designed as two separate independent living facilities. There is one independent living facility on the main level and one separate independent living facility located in the basement, each of which contains an improved space consisting of a fully equipped kitchen, bathroom(s), and bedrooms.

A dwelling unit is defined in Part 3 of Article 20 of the Fairfax County Zoning Ordinance as:

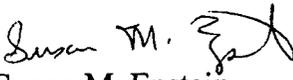
One (1) or more rooms in a residential building or residential portion of a building which are arranged, designed, used, or intended for use as a complete, independent living facility which includes permanent provisions for living, sleeping, eating, cooking and sanitation. Occupancy shall be in accordance with the provisions of Sect. 2-502.

Therefore, you are in violation of Sect. 2-501 of the Zoning Ordinance that states, in part:

Ray G. Worley, Sr.
Estella C. Worley
July 19, 2006
Page 3

Should you have any questions or need additional information, please do not hesitate to contact me at (703) 324-1388 or (703) 324-1300.

Sincerely,


Susan M. Epstein
Senior Zoning Inspector

SME/seg

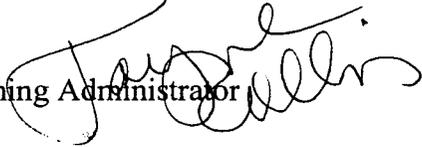


County of Fairfax, Virginia

MEMORANDUM

DATE: April 1, 2008

TO: John F. Ribble, III, Chairman
Members, Board of Zoning Appeals

FROM: Jayne M. Collins
Assistant to the Zoning Administrator 

SUBJECT: Request for Deferral of Decision

REFERENCE: Appeal A 2006-PR-056
G. Ray Worley, Sr. and Estella C. (H.) Worley
2537 Gallows Road
Tax Map: 49-2 ((1)) 4B

This is an appeal of a determination that the appellants are maintaining two dwelling units on a single lot in the R-3 District. The appellants are maintaining one separate independent living facility in the main house and a second, separate independent living facility in a detached garage. A copy of the original staff report is provided as Attachment A.

Accessory dwelling units are permitted in association with single family detached dwelling units upon approval of a Group 9 Special Permit by the Board of Zoning Appeals (BZA) provided certain standards are met. At the public hearing conducted on March 6, 2007, the appellants indicated a desire to submit an application for a special permit for an accessory dwelling unit and, as a result, the appeal decision was deferred to June 5, 2007 to allow the appellant time to compile the necessary documents for a special permit application. On May 7, 2007, the appellants requested a further deferral because of difficulties with the design of the structure which will connect the detached garage to the main house. As a result, the decision was deferred until September 25, 2007. The appellants submitted their special permit application to the Zoning Evaluation Division (ZED) on September 14, 2007. On September 25, 2007, the BZA again deferred the decision until December 11, 2007 to allow time for ZED staff to review and process the special permit application. The application contained several deficiencies and, in addition, staff requested that the appellants redesign the connection between the dwelling unit and the garage to include a roof. On November 26, 2007, the appellants submitted revised drawings which showed the newly designed connection and continued to work with staff to address the other deficiencies in the application and the plat.

Department of Planning and Zoning
Zoning Administration Division
12055 Government Center Parkway, Suite 807
Fairfax, Virginia 22035-5505
Phone 703-324-1374 FAX 703-803-6372
www.fairfaxcounty.gov/dpz/

John F. Ribble
April 1, 2008
Page 2

On March 20, 2008, the appellants submitted their revised special permit application and plat and on March 21, 2008, the special permit application was accepted.

It is staff's judgment that the appellants are diligently pursuing the special permit which, if approved, will allow the appellants to keep the second dwelling unit in their detached garage and resolve the outstanding zoning violation on the subject property. Therefore, staff supports a further deferral of the appeal decision in order to allow time for the special permit process to take place and recommends that the appeal decision be placed on the BZA agenda for July 15, 2008. The appellants have been advised of, and concur with, the new date.

JMC

Attachments: A/S

cc: Linda Q. Smyth, Supervisor
Providence District
Eileen McLane, Zoning Administrator
Mavis E. Stanfield, Deputy Zoning Administrator for Appeals
Michael R. Congleton, Senior Deputy Zoning Administrator
for Zoning Enforcement/Property Maintenance
Diane Johnson-Quinn, Deputy Zoning Administrator
for Zoning Permit Review Branch
Steve Mason, Property Maintenance/Zoning Enforcement Supervisor
Susan Epstein, Property Maintenance/Zoning Enforcement Inspector
Greg Chase, Senior Staff Coordinator, Special Permit and Variance Branch
Kathleen Knoth, Clerk, Board of Zoning Appeals
Lori Mallam, Administrative Assistant
Suzanne Gilbert, Appeals Coordinator
Terry A. Heath, Planning Technician
Amy Muir, Administrative Assistant
G. Ray Worley, Sr. and Estella C. (H.) Worley, Appellants



**FAIRFAX
COUNTY**

BOARD OF ZONING APPEALS

**PUBLIC HEARING DATE: March 6, 2007
TIME: 9:30 a.m**

V I R G I N I A

February 27, 2007

STAFF REPORT

APPEAL APPLICATION A 2006-PR-056

PROVIDENCE DISTRICT

APPELLANT: G. Ray Worley, Sr. and Estella C. (H.) Worley

LOCATION: 2537 Gallows Road

TAX MAP REF: 49-2 ((1)) 4B

ZONING DISTRICT: R-3

SITE AREA: 15,375 square feet

NATURE OF APPEAL: Appeal of a determination that the appellants are maintaining two dwelling units on a single lot located in the R-3 District in violation of Zoning Ordinance provisions.

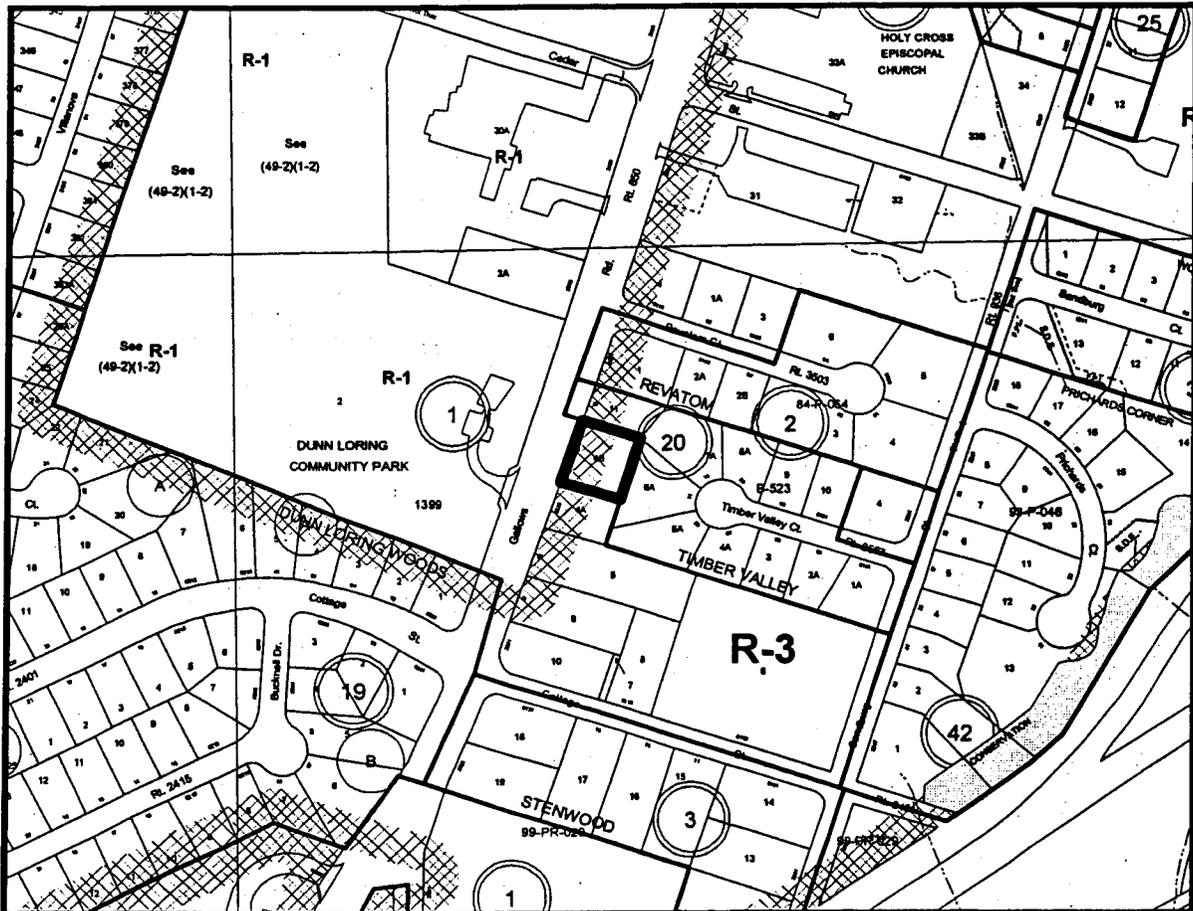
JMC

For information, contact the Zoning Administration Division, Department of Planning and Zoning, 12055 Government Center Parkway, Suite 807, Fairfax, Virginia 22035-5505, 703-324-1314.

APPEAL APPLICATION

A 2006-PR-056

G. RAY WORLEY, SR. AND ESTELLA C. (H.)
WORLEY, A 2006-PR-056 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants are maintaining two dwelling units on a single lot located in the R-3 District in violation of Zoning Ordinance provisions. Located at 2537 Gallows Rd. on approx. 15,375 sq. ft. of land zoned R-3. Providence District. Tax Map 49-2 ((1)) 4B.



DESCRIPTION OF APPEAL

- Appellant:** G. Ray Worley, Sr. and Estella C. (H.) Worley
- Issue:** Appeal of a determination that the appellants are maintaining two dwelling units on a single lot located in the R-3 District in violation of Zoning Ordinance provisions.
- Property Description:** The property that is the subject of this appeal is located at 2537 Gallows Road in the Dunn Loring area of the County, northwest of the intersection of Interstate 66 and Gallows Road and across Gallows Road from Dunn Loring Community Park. The lot is developed with a two story, single family detached dwelling unit built in 1930 and a two-story detached, two-car garage built in 1953. A copy of the applicable Fairfax County zoning map showing the location of the subject property is provided on the previous page.
- Appellant's Position:** The appellant's application and basis for appeal are set forth in Attachment 1.

ZONING ORDINANCE PROVISIONS

The provisions of the current Zoning Ordinance which are germane to this appeal are listed below. The complete text of these provisions is enclosed as Attachment 2.

- Sect. 2-501, Limitation on the Number of Dwelling Units on a Lot
- Par. 17 of Sect. 8-901, Group 9 Special Permit Uses
- Sect. 8-918, Additional Standards for Accessory Dwelling Units
- Paragraphs 1 and 12 of Sect. 10-104, Location Requirements (Accessory Uses, Accessory Service Uses and Home Occupations
- Paragraphs 6E and 9 of Sect. 15-103, Regulations Controlling Other Nonconforming Uses
- Definitions of ACCESSORY USE; DWELLING; DWELLING, SINGLE FAMILY; DWELLING UNIT; GARAGE; LOT; and NONCONFORMING BUILDING OR USE as set forth in Article 20 of the Zoning Ordinance

The provisions of the 1941 Zoning Ordinance which are germane to this appeal are listed below. The complete text of these provisions is enclosed as Attachment 2.

dwelling units as one separate living facility located on the main level of the principal dwelling unit and a second, independent living facility located in the basement of the main dwelling unit.

- On August 16, 2006, the appellants submitted a Freedom of Information Act (FOIA) request to the Zoning Administrator, requesting the following: (1) “a copy of pertinent sections of all zoning ordinances since 1942, and any legislative comments of record, plus the legislative history of relevant zoning ordinances, with emphasis upon Article 15 as enumerated in the existing ordinance, with especial attention to Zoning Amendment #89-185 and any Board of Supervisor comments in discussion of adopting the amendment”; (2) “any and all BZA actions on zoning violation charges similar to the action item of this comment”; (3) “any and all BOS actions and legislative commentary that might be relevant”; and (4) “any inter-related phrases, clauses, references, or relationships that might be expressed or inferred in any ordinance or citation, whether in ordinances or at law, including legislative history and legislative commentary”. A copy of the FOIA request is presented as Attachment 6.
- On August 23, 2006, the July 19, 2006 Notice of Violation was rescinded and a new Notice was issued which correctly identified the two independent living facilities as the main house and in the detached garage. The appellants were directed to reduce the number of dwelling units on the subject property to no more than one dwelling unit by removing all cooking facilities from the detached garage, including a microwave, hot plate, convection oven or any other heat source used for cooking purposes which might be located in the garage apartment and to remove any sink and/or refrigerator if such items were located in the garage apartment. A copy of the Notice is provided as part of the appellant’s submission, Attachment 1.
- On August 27, 2006, Mr. Worley sent an e-mail to Mavis Stanfield, Deputy Zoning Administrator for Appeals. The e-mail included an attached letter dated August 25, 2007 to Eileen McLane, Zoning Administrator, clarifying the type of information he was seeking in the FOIA request. In his letter to the Zoning Administrator, Mr. Worley identified six points of concern and noted that his goal was to obtain a determination that, when the garage was originally constructed, it was a permitted use. A copy of the letter is presented as Attachment 7.
- On August 31, 2006, staff responded to the appellants’ FOIA request, stating that, even as modified, the request was not specific enough to enable staff to identify the documents requested. Staff provided Mr. Worley with information regarding the cost to provide the requested information and asked for an additional seven days in which to respond. It is noted that the appellants did not pursue the FOIA request and no response was provided. A copy of staff’s response is provided as Attachment 8.
- On September 19, 2006, staff responded to Mr. Worley’s August 25th e-mail letter to Eileen McLane. In the letter, staff noted that accessory structures are a permitted use in the R-3 District, provided the structure complies with the location requirements of Par. 12 of Sect. 10-104 of the Zoning Ordinance. The letter further noted that a dwelling unit is not an accessory structure and, in accordance with Sect. 2-501 of the Ordinance, with few exceptions, only one dwelling unit is permitted on any one lot. Finally, the letter noted that, except for a brief period following World War II when duplex dwellings were permitted

- Par. 1A of Sect. V, Use Regulations, Suburban Residence District
- Paragraphs A1 and A7 of Sect. IV, Use Regulations, Rural Residence District
- Definitions of ACCESSORY BUILDING; DWELLING, SINGLE FAMILY; GARAGE, PUBLIC OR PRIVATE; LOT.

BACKGROUND

- According to Department of Tax Administration (DTA) records, the single family dwelling on the subject property was constructed in 1936 and the detached garage which is the subject of this appeal was constructed in 1953 pursuant to Building Permit #4846, issued to G. F. Worley. Our records do not contain a copy of either building permit; however the building permit number for the construction of the garage is noted on the DTA assessment card. A copy of the DTA records is presented as Attachment 3.
- According to information provided by the appellant, between 1952 and 1973, the first floor of the detached garage was used by the appellant's mother as a private school and the second floor was used as a residence by various family members who stayed on the property from time to time.
- The subject property was conveyed to the appellants by Bessie B. Worley and recorded in Deed Book 9743, Page 1508 on June 28, 1996. A copy of the deed is presented as Attachment 4.
- A complaint was received in the Zoning Enforcement Branch (ZEB) on June 9, 2006 alleging that the detached garage on the subject property was being used as a second dwelling unit.
- ZEB staff inspected the subject property on June 15, 2006 and spoke with the appellant. The appellant stated to ZEB staff that the two-story detached garage was lived in by family members from time to time and that it contained a half-bath, shower, commode and microwave oven. ZEB staff was not permitted to inspect the interior of the garage. Photographs of the exterior of the house and the garage are presented as Attachment 5.
- On June 22, 2006, per their request, ZEB staff provided the appellants with a copy of Sect. 2-501 of the Zoning Ordinance. At that time, Mr. Worley stated to staff that his nephew was living in the garage and helping out around the house because of the appellant's health concerns. Again, staff was not permitted to inspect the interior of the garage, but based on the information provided by Mr. Worley, ZEB staff determined that a zoning violation existed.
- On July 19, 2006, a Notice of Violation (Notice) was issued to Ray G. Worley, Sr. and Estella C. Worley for having two separate independent living facilities on the subject property. It is noted that the Notice incorrectly stated Mr. Worley's name as Ray G. Worley, Sr. The correct name is G. Ray Worley, Sr. The letter also mistakenly identified the two

under certain, limited circumstances upon approval of a special exception by the Board of Zoning Appeals, Zoning Ordinance provisions have always only permitted one dwelling unit on any one lot in Fairfax County. A copy of the letter is presented as Attachment 9.

- On September 20, 2006, at their request, staff met with the appellants to provide information on Sect. 2-501 and how it applies to their property. Staff also provided the appellants with past zoning interpretations and some history of previous Zoning Ordinance provisions with regard to multiple dwelling units on a lot. In addition, staff advised the appellants that, since the effective date of the first Zoning Ordinance on March 1, 1941, only one dwelling unit has been permitted on any one lot.
- On September 20, 2006, the subject appeal was filed with the Zoning Administrator and with the Board of Zoning Appeals.
- The appeal was accepted on October 3, 2006 and scheduled for public hearing before the Board of Zoning Appeals on the morning of December 12, 2006.
- On December 28, 2006, the appellants requested a deferral of the public hearing for the subject appeal due to scheduling conflicts. The appeal was subsequently rescheduled for March 6, 2007.

ZONING ADMINISTRATOR'S POSITION

This is an appeal of a determination that the appellants are maintaining two dwelling units on a single lot located in the R-3 District in violation of Zoning Ordinance provisions. The appellants are maintaining one separate independent living facility in the main house and a second, separate independent living facility in the detached garage, each of which contains an improved space consisting of cooking facilities, bathroom(s) and bedroom(s).

As a result of a complaint filed with the Zoning Enforcement Branch (ZEB) alleging the existence of more than one dwelling unit on the subject property, ZEB staff inspected the subject property on June 15 and June 22, 2006. Based upon observations and representations by the appellants, the inspections revealed the existence of two separate dwelling units on the subject lot, each of which has been designed as a separate and independent living facility. One of the dwelling units is the principal dwelling unit and, according to the appellant, a separate dwelling unit is located in the two-story, detached garage on the same lot. Each dwelling unit contains an improved space consisting of cooking facilities, bathroom(s) and bedroom(s). Although staff was not allowed to inspect the interior of the detached garage or the principal dwelling during either inspection, one of the appellants, Mr. G. Ray Worley, stated to staff that the living quarters in the garage were used by visiting family members from time to time and contained a half-bath, shower, commode and microwave oven. Mr. Worley also stated at the time of the second inspection that his nephew was living in the garage apartment to help him around the house. It is noted that the nephew no longer resides in the garage apartment and it is unknown whether anyone is currently residing in the garage apartment. Photographs of the exteriors of the house and garage are provided in Attachment 4.

A dwelling unit is defined in Article 20 of the Zoning Ordinance as “one (1) or more rooms in a residential building or residential portion of a building which are arranged, designed, used or intended for use as a complete, independent living facility which includes permanent provisions for living, sleeping, eating, cooking and sanitation.” Based on observations made by ZEB staff during the two inspections and the statements made to staff by the appellants, it has been determined that the apartment in the detached garage, which contains a half-bath, sink, commode and microwave oven, conforms to the definition of a dwelling unit as set forth in Article 20. Sect. 2-501 of the Zoning Ordinance provides, with few exceptions, that there shall not be more than one dwelling unit on any one lot, nor shall a dwelling be located on the same lot with any other principal building. Given that the single family detached dwelling unit on the subject property is the principal dwelling on the lot, and the apartment in the garage, which is also a dwelling unit, is located on the same lot as the principal dwelling unit, there are two dwelling units located on the subject Lot 4B. Since Zoning Ordinance provisions allow only one dwelling unit on any one lot, the appellants are in violation of Sect. 2-501 of the Zoning Ordinance.

Although County records do not contain copies of any building permits that may have been issued for the construction of the principal dwelling unit or the garage, County assessment records do indicate that the dwelling was constructed in 1930 and Department of Tax Administration’s (DTA) assessment cards show that the first assessment of the property occurred in 1936. The records indicate that some improvements to the property were added in 1942 and the detached garage was added in 1953 pursuant to Building Permit #4846 issued to G. F. Worley (the appellant’s father). It appears that the property has been continuously taxed as one single family dwelling unit with an accessory detached garage since that time. The garage was constructed under the 1941 Zoning Ordinance, which was a permissive Zoning Ordinance. Under that Ordinance, only those uses that were specifically named were permitted. (See *County of Fairfax v. Parker*, 186 Va. 675, 678, 44 S.E. 2d, 9, 10.) Additionally, under the 1941 Zoning Ordinance definition of a lot, only one principal dwelling was permitted on a single lot. [*BOS v. BZA*, 271 Va. 336, 349, 626 SE 2d, 374, 382 (2006)]. The subject property was zoned Suburban Residence District when the appellants’ garage was created in 1953 under the 1941 Zoning Ordinance. Under the Suburban Residence District regulations, multiple dwelling units on one lot were not permitted and an accessory use and principal use were not permitted to occupy the same structure. In fact, the 1941 Zoning Ordinance allowed the establishment of only a “single family detached dwelling” in the Suburban Residence District, meaning not more than one dwelling.

In addition to the apartment on the second floor of the detached garage, the appellants have stated to staff that between 1952 and 1973, the appellant’s mother used the first floor of the garage for a private school. Although public and parochial schools were permitted in the Suburban Residence District, private schools such as the one operated by the appellant’s mother in the detached garage, were not permitted. The 1941 Zoning Ordinance permitted only one principal use and an unspecified number of accessory uses on any one lot and, between 1952 and 1973, the subject property contained three principal uses (and no accessory uses). Those principal uses were the main dwelling unit, and the garage apartment and the private school which were both located in the detached accessory garage structure. A private school cannot be considered accessory to a residential use; it is a principal use in and of itself.

According to the appellants, the operation of the private school ceased in 1973, and the

garage was then used entirely for residential purposes. The appellants provided affidavits with their appeal statement to support their argument that the garage has been used for a residence from 1952 until the present and that a private school operated on the first floor of the garage from 1952 until 1973. One of the affidavits, from Louise B. Worley Plaugher, states that from 1952 until 1973 the “cottage” (garage) was used in a “dual role”. She states that “the first floor was used predominantly as a classroom, whereas the upper room (a second floor) was often used as an available living area.” The appellants provided several other affidavits with their appeal submission which indicate that “many family members and friends used the ‘Cottage’ in various ways in the years spanning from 1952 to the present date”. However, staff could find no County records which indicate that the use of the detached garage for a private school or a second dwelling unit was ever legally established on the subject property as those uses were not permitted in any residential district under either the 1941 or the 1959 Zoning Ordinances. In fact, the County has assessed the structure as an accessory detached garage since 1953.

A legal nonconforming use is defined as a building or use which lawfully existed on the effective date of this or prior Ordinances and which has continued, without an interruption for a period greater than two years, since the use was established. In accordance with the provisions of Article 15 of the Zoning Ordinance, the use of the accessory garage as a second dwelling unit cannot be considered legally nonconforming because such use was never legally established on the property. Moreover, it is well established that “a use accessory or incidental to a permitted use ‘cannot be made the basis for a nonconforming principal use.’” (*Knowlton v. BFI*, 220 Va. 571, 575, 220, Va. 260 S.E.2d 232 at 236, 1979)

The 1941 Zoning Ordinance defined an *accessory building* as a “subordinate building on the same lot with a main building, the use of which is incidental to that of the main building, such as a **garage** or stable. (emphasis added) Moreover, the definition of a garage in the 1941 Ordinance made no provision or allowance for its use as a dwelling, providing that a garage was a “building used for the housing or storing of motor driven vehicles, in which no commercial repair work is done.” This language cannot be construed to mean that a garage can also be used as a dwelling. The meaning of these definitions is self-evident: garages were accessory uses to store vehicles and single family detached dwelling units were, first and foremost, dwellings, not garages. It should be noted that this definition is consistent with the tax records which have continuously shown a single family house and a detached garage on the property since 1953.

In their August 25, 2006 letter to the Zoning Administrator, the appellants state that the detached garage has been used “unabated” as a “convenient residential unit” since 1959 and they provided affidavits to support that contention. It has already been established that the garage apartment was not legally established under the 1941 Zoning Ordinance because the Suburban Residence District did not permit more than one dwelling unit per any one lot. Under the 1959 Zoning Ordinance, the subject property was zoned RE-12.5, which district permitted “one-family dwellings” and “accessory buildings and uses”. The RE 12.5 District provisions under the 1959 Zoning Ordinance did not permit a second dwelling unit on a lot. Therefore, the use of the detached garage as a second dwelling unit was not legally established under the 1959 Zoning Ordinance. The appellants also state in Paragraph 7A of their statement that they believe that when the garage was built in 1953 “more than one living unit could be located on a parcel of the size of about five acres”. A “parcel” of land could be one individual lot or it could be several individual lots that are being referred to as a “parcel”. However, as has been shown, since 1941,

the Zoning Ordinance has permitted only one dwelling unit on any sized lot.

In their appeal statement, the appellants argue three “concepts”: (1) the concept that “the prevailing use should be grandfathered; (2) the concept of “equity and fairness under the law”; and (3) the concept of “adverse possession which is suggestive of an acquired right of ownership and use under the law.” With regard to Concept #1, the appellants appear to be relying on the nonconforming provisions found in Article 15 of the Zoning Ordinance as their basis for their contention that the use of the garage as a dwelling unit is grandfathered. They quote portions of Par. 6E of Sect. 15-103, which they say “acknowledge and recognize the principle of ‘grandfathering’” and they suggest that Zoning Ordinance Amendment ZOA #89-185 supports their position. In fact, ZOA #89-185 was designed to modify the commercial and industrial district regulations. The amendment, among other things, added hotels and motels as a by right use in the C-3 and C-4 office districts, limited the location of office uses in the C-5 through C-8 commercial districts to shopping center sites, limited office uses to 15% of the total gross floor area of non-office business uses, and revised the floor area ratio (FAR) provisions in the C-5 through C-8 commercial districts. The amendment also provided for similar revisions to provisions in the industrial districts. In order to address existing commercial and industrial uses which may have been made nonconforming by the adoption of ZOA #89-185, grandfathering provisions were included with the amendment which would permit those commercial or industrial uses to remain or to be reconstructed in certain instances. The amendment did not address or modify any provisions associated with residential districts or residential uses. A complete copy of the text of ZOA #89-185 is provided as Attachment 10. The provisions contained in Par. 6E of Sect. 15-103 of the Zoning Ordinance do not address residential issues, they implement ZOA #89-185 and allow the reconstruction of a commercial or industrial use if such use was conforming prior to the adoption of ZOA #89-185. The appellants also argue that Par. 9 of Sect. 15-103 is relevant to their appeal because it addresses the “principle of non-conforming [sic] use flowing with the building”. This provision is only applicable to a property if that property is deemed to be nonconforming, which is not the case with the appellants’ property. The complete text of Paragraphs 6E and 9 of Sect. 15-103 is provided in Attachment 2.

The appellants also argue that the concept of “equity and fairness” should apply to their situation. In their appeal statement, the appellants reference a Washington Post article regarding the application of building height regulations. They note that the Washington Post article reported that homes that were already existing would be “grandfathered” or could modify the roof structure to obtain compliance with height regulations. The appellants suggest that “unstated was the implication that zoning staff would more strictly analyze any application for a building permit to determine and require that the homes meet the 35 feet height limit”. The appellants further suggest that it can be “reasonably implied” (although not stated in any public discussion) that existing homes with occupancy permits which do not meet the 35 foot height restriction were “grandfathered” and the homeowners would not be required to alter the roof height. As previously stated, in order to be nonconforming or “grandfathered”, a use must have been legally established under a prior Zoning Ordinance. Further, such logic would not be relevant in the appellants’ case because no permit has ever been issued for the appellants’ garage apartment. In their appeal statement, the appellants “strongly assert and feel compelled to vigorously pursue the concept that the use of the property set forth in [their] statement and bolstered by the attachments ... supports that the prevailing use of the subject property referenced in [their] application is in fact ‘grandfathered in.’” In order to be “grandfathered”, a use must

have been legally established under a prior Zoning Ordinance. As has been demonstrated above, the use of the garage apartment as a second dwelling unit was never legally established on the subject property because only one dwelling unit has been permitted on any one lot since the effective date of the first Zoning Ordinance on March 1, 1941.

The appellants also present an argument of “adverse possession” and claim that they should be allowed to continue using the garage as a second dwelling unit because it has been used unabated as a dwelling for “some forty-five years”. Staff assumes that the appellants are claiming that they adversely possess the right to use the garage apartment as a dwelling because it has been used (illegally) as an apartment for so many years. Staff contends that they enjoy no such right because the use of the garage as a dwelling was never legally established under any Zoning Ordinance. Furthermore, adverse possession pertains to property acquisition, not to how a property is used.

On several occasions staff has discussed a possible remedy with the appellants. Accessory dwelling units are permitted in association with single family detached dwelling units upon approval of a Group 9 Special Permit by the BZA and provided certain standards are met. Those standards are set forth in Paragraphs 1 through 5 of Sect. 8-918 of the Zoning Ordinance and provide that on lots containing less than two acres, the accessory dwelling unit must be located within the structure of the single family dwelling unit; the accessory dwelling unit shall not contain more than two bedrooms; one of the dwelling units must be owner-occupied and one must be occupied by a person who is over 55 years of age or permanently or totally disabled. Finally, the accessory dwelling unit may not be occupied by more than two persons who are not necessarily related by blood or marriage and the principal single family dwelling unit may be occupied by one family, which consists of one or two persons not necessarily related by blood or marriage with any number of natural, foster, step or adopted children or a group of not more than four unrelated persons. Par. 1 of Sect. 10-104 of the Zoning Ordinance provides that if an accessory-type building is attached to a principal building by any wall or roof construction, it is deemed to be a part of the principal building. Therefore, attaching the appellants’ garage to their dwelling via a breezeway or other roofed connection would satisfy the requirements of Par. 1 of Sect. 10-104 and allow the appellants to apply for a special permit and meet the additional standards for approval of an accessory dwelling unit. The appellants have indicated to staff that this solution is not attractive to them as they claim that connecting the detached garage with the main house via a breezeway would create a wind tunnel effect which would be detrimental to the existing buildings.

In conclusion, the appellant do not deny that two dwelling units exist on the subject property. The detached garage on the subject property was constructed in the early 1950’s under the 1941 Zoning Ordinance and the second floor of the garage has been used continuously as a residential apartment since that time. There was no provision under the 1941 Zoning Ordinance which would allow a second, independent dwelling unit on a lot. Additionally, in a recent Virginia Supreme Court decision (*BOS, et. al. v. BZA, et. al. Record No. 051269 Circuit Court Case No. CL-2004-022-4071*) which dealt with a similar issue, the Court found that even though an apartment had been established in a detached garage 54 years ago, the homeowners enjoyed no nonconforming rights to continue the garage apartment use because the use was never legally established. (A copy of the Virginia Supreme Court ruling is provided as Attachment 11.) No matter how long the second dwelling unit, the garage apartment, has been in use on the subject

property, the use of the detached garage for a residence was never legally established under any Zoning Ordinance and, as a result, the appellants enjoy no nonconforming or "grandfathered" rights to use the detached garage for a second dwelling unit on the subject lot. Therefore, staff recommends that the BZA uphold the Zoning Administrator's determination as set forth in the Notice of Violation dated August 23, 2006.

ATTACHMENTS:

1. Appellant's Application and Basis for Appeal
2. Applicable Zoning Ordinance Provisions
3. Department of Tax Administration Assessment Records
4. Deed Book 9743, Page 1508
5. Photographs of the Exterior of the House and Garage
6. Appellants' FOIA Request Dated August 16, 2006
7. August 27, 2006 Letter From G. Ray Worley to Mavis Stanfield
8. August 31, 2006 Staff Response to FOIA Request
9. September 19, 2006 Staff Response
10. Zoning Ordinance Amendment ZOA 85-189
11. Virginia Supreme Court Decision



COMMONWEALTH OF VIRGINIA
COUNTY OF FAIRFAX
APPLICATION FOR APPEAL

Please type or
Print in Black Ink
FAIRFAX COUNTY
RECEIVED
SEP 20 2006
DIVISION OF
ZONING ADMINISTRATION

APPLICATION NO. A2006-PR-056
(Assigned by Staff)

NAME OF APPELLANT: G. Ray Worley, Sr. & Estella C. (H.) Worley

NATURE OF THE APPEAL: Appeal based on several criteria stated in enclosed letter (1) aggrieved use is grandfathered in, (2) use is justified by "Fair and Equitable" treatment, based on recent BOS actions and in law, and (3) use is justified by applying the concept of adverse possession. We seek withdrawal, dismissal or reversal of alleged violation.

DATE OF ORDER, REQUIREMENT, DECISION, DETERMINATION OR NOTICE OF VIOLATION WHICH IS SUBJECT TO THE APPEAL August 23, 2006 as per attached

HOW IS THE APPELLANT AN AGGRIEVED PERSON? Applicants/Appellants are owners of the property and would be deprived of a historic use of the property and negatively impacted in many ways, see attached letter.

IF APPEAL RELATES TO A SPECIFIC PROPERTY, PROVIDE THE FOLLOWING INFORMATION:

POSTAL ADDRESS OF PROPERTY: 2537 Gallows Rd., Dunn Loring, VA 22027

TAX MAP DESCRIPTION: 0492-01-0004B

The undersigned has or has not (circle one) the authority to allow and does or does not (circle one) authorize Fairfax County staff representatives on official business to enter on the subject property as necessary to process the application.

G. Ray Worley, Sr. & Estella C. (H.) Worley with G. Ray Worley, Sr. as Agent
Type or Print Name of Appellant or Agent

G. Ray Worley Sr. & Estella C. (H.) Worley August 20, 2006
Signature of Appellant or Agent

2537 Gallows Rd, Dunn Loring, VA 22027 G. Ray Worley Sr. as Agent
Address

703-560-3010 Home 703-560-7655 Work
Telephone No.

Please provide name and phone number of contact person if different from above.

DO NOT WRITE IN THIS SPACE

Subdivision Name: Dunn Loring, Lt. 2A of Pt. Lt. 26

Total Area (Acres/Square Feet): 15,375 sq. ft.

Present Zoning: R-3

Supervisor District: Providence

Date application received: 9/20/06 Application Fee Paid: \$ 375.00

Date application accepted: 10/3/06



County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

August 23, 2006

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NOTICE OF VIOLATION

CERTIFIED MAIL

Return Receipt Requested

Receipt # 7005 1820 0002 9285 9963

Zoning Administration Division

Ray G. Worley, Sr.
Estella C. Worley
2537 Gallows Road
Dunn Loring, Virginia 22027

Re: 2537 Gallows Road
Dunn Loring, Lot 2A of Pt. Lot 26
Tax Map Ref: 49-2 ((1)) 4B
Zoning District: R-3

Dear Mr. and Mrs. Worley:

The purpose of this letter is to rescind and reissue the July 19, 2006 Notice of Violation. It is noted that this Notice of Violation supersedes the July 19, 2006 Notice of Violation. Zoning inspections and conversations on June 15, 2006, and June 22, 2006, revealed that there are two separate dwelling units located at 2537 Gallows Road, which have been designed as two separate independent living facilities. There is one dwelling in the house and another dwelling unit located in the detached garage, each of which contains an improved space consisting of cooking facilities, bathroom(s), and bedroom(s).

A dwelling unit is defined in Part 3 of Article 20 of the Fairfax County Zoning Ordinance as:

One (1) or more rooms in a residential building or residential portion of a building which are arranged, designed, used, or intended for use as a complete, independent living facility which includes permanent provisions for living, sleeping, eating, cooking and sanitation. Occupancy shall be in accordance with the provisions of Sect. 2-502.

Department of Planning and Zoning
Zoning Administration Division
Zoning Enforcement Branch
12055 Government Center Parkway, Suite 820
Fairfax, Virginia 22035-5501
Phone 703-324-1300 FAX 703-324-1300
www.fairfaxcounty.gov/

Ray G. Worley, Sr.
Estella C. Worley
August 23, 2006
Page 2

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SEP 20 2006

Therefore, you are in violation of Sect. 2-501 of the Zoning Ordinance that states,
in part:

Zoning Administration Div

There shall be not more than one (1) dwelling unit on any one (1) lot, nor shall a dwelling unit be located on the same lot with any other principal building.

You are, hereby, directed to clear this violation within thirty (30) days of receipt of this Notice. Compliance can be accomplished by the following:

Reducing the number of dwelling units at 2537 Gallows Road to one by:

- Removing all facilities which serve to establish no more than one (1) dwelling unit at 2537 Gallows Rd. This requires that you do the following, at a minimum, with respect to the second kitchen in the premises:
 - Removing all cooking facilities from the detached garage, which you have indicated there is only a microwave oven. Once the microwave oven is removed, **no** other like appliance is to be substituted in the detached garage; for example: convection oven, hot plate, or any other heat source used for cooking purposes is allowed in the basement; and
 - If any of the following items are also located in the detached garage, remove the sink and/or refrigerator located within the detached garage.

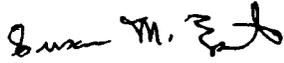
A follow-up inspection will be made at the expiration of this time. Failure to comply, with this Notice, **shall** result in the initiation of appropriate legal action to gain compliance with the Zoning Ordinance.

You may have the right to appeal this Notice of Zoning Violation within thirty (30) days of the date of this letter in accordance with Sec. 15.2-2311 of the Code of Virginia. This decision shall be final and unappealable if it is not appealed within such thirty (30) days. Should you choose to appeal, the appeal must be filed with the Zoning Administrator and the Board of Zoning Appeals (BZA) in accordance with Part 3 of Article 18 of the Fairfax County Zoning Ordinance. Those provisions require the submission of an application form, written statement setting forth the decision being appealed, date of decision, the grounds for the appeal, how the appellant is an aggrieved party and any other information you may wish to submit and a **\$375.00** filing fee. Once an appeal application is accepted, it is scheduled for public hearing and decision before the BZA.

Ray G. Worley, Sr.
Estella C. Worley
August 23, 2006
Page 3

Should you have any questions or need additional information, please do not hesitate to contact me at (703) 324-1388 or (703) 324-1300.

Sincerely,



Susan M. Epstein
Senior Zoning Inspector

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SME/seg

Zoning Administration Div.

THE G. RAY WORLEYS
2537 Gallows Road
Dunn Loring, Va 22027
703.560.3010; 703/560/7655 FAX
grworley@erols.com

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9/19/06

Ms. Eileen M. McLane

ZONING ADMINISTRATOR

Zoning Administration Division

Department of Planning and Zoning

12051 Government Center Parkway, Suite 807

Fairfax, VA 22035

703.324.1314

Re: Notice of Violation of Zoning Ordinance Sec. 2-501
Issued by Susan M. Epstein, Senior Zoning Inspector
Dated: August 23, 2006

We/I take note of the Notice of "alleged violation", and respond in my capacity as authorized agent in behalf of G. Ray Worley, Sr. and Estella C. [H.] Worley. We hereby affirm that G. Ray Worley, Sr. will be acting as authorized agent, but in the event he is unable to act we affirm that first, Estella C. (H.) Worley be authorized to act, and then if she is unable to act that second, G. Ray Worley, II, our son be authorized to act, and in case he is unable to act that third in line, Wayne Comer, an attorney, be authorized to act in our behalf on this instant issue.

In our behalf, We/I hereby file an appeal of this Notice of Violation, dated August 23, 2006, using the proper form and filing process, and purpose to follow all designated procedures to appeal this Notice by filing for a hearing before the Board of Zoning Appeals.

Herewith We/I reference and incorporate as is appropriate:

- 1. Copy of a Notice of Violation dated August 23, 2006**

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Zoning Administration Div

2. **The Application for a Hearing on a Zoning Violation**
3. **A check for \$375.00 made payable to the County of Fairfax**
4. **Three affidavits in the form of a letter To Whom It May Concern.**
5. **This letter of explanation and seeking reversal.**

Moreover, we refer to and adduce three concepts: (1) The concept that the prevailing use should be "grandfathered" in. (2) The concept of "equity and fairness" under the law. (3) The concept of "adverse possession" which is suggestive of an acquired right of ownership and use under the law.

This letter serves as our explanation and the basis for our appeal.

The quaint expression "quiet enjoyment" caught my attention when I was studying real estate law. Using a play on words I might comment that our present experience in receiving a Notice of Zoning Violation has been "unenjoyably disquieting".

Since 1952, our family had considered the use of the garage/cottage to be an approved use. The length of our use confirmed our assumption. Surely it was permitted and now should be considered grandfathered in for family use!!!

Thus, we were "disquieted" to be informed that our use was subject to challenge. Regardless, we would like to clear the air and resolve any different misconception about the use of our property.

In framing our appeal of the Notice, we ask that the Board of Zoning Appeals reverse the Notice of violation dated August 23, 2006 and affirm our historic right to use our property based on the application of several theories and concepts in law, using the following assumptions, observations, citing of affidavits and reasoning:

The existing code reflects two important principles:

1. **The principle of "grandfathering":**

SEP 20 2006

Zoning Administration D

Article 15, Part I, 15-103:6, E

“If a building or use was a conforming use immediately prior to December 12, 1889, the effective date of Zoning Ordinance Amendment # 89-186-5, and was made nonconforming by Zoning Ordinance Amendment # 89-185 solely on the basis of one or more of the following conditions, or if a building or use was constructed pursuant to a site plan, approved building permit, approved special permit or approved special exception grandfathered from Zoning Ordinance Amendment #89-185 “

[While the above statement references specific conditions, it does acknowledge and recognize the principle of “grandfathering” in of certain land or building uses. GRW]

2. The principle of non-conforming use flowing with the building:**Article 15, Part 1, 15-103:9.**

“The rights pertaining to a nonconforming use of building shall be deemed to pertain to the use or building itself, regardless of the ownership of the land or building on or in which such nonconforming use is conducted or of such nonconforming building or the nature of the tenure of the occupancy thereof.”

As others have attested (see Attachments #1, #2, and #3 which are incorporated herein as a part of this statement), many family members and friends used the “Cottage” in various ways in the years spanning from 1952 to the present date. It was built in 1952 and configured to permit use later as a garage, but intended to be used as a part of Mrs. Worley’s Primary School. The Cottage was situated on almost 5 acres of land owned by G. F. and Bessie B. Worley. We have accepted that te subject building conformed to regulations for building prevailing at the 1952 date, and absence evidence to the contrary would stipulate so, although I was not able to locate any record of a 1952 building permit in the automated system now used in Fairfax County.

1. My Mother, under the title of "Mrs. Worley's Primary School", used the structure from 1952 into 1973. Many children, now adults, were stimulated by the instruction and good will carefully nurtured there. Interestingly, as best we can determine and recall, she was not required to have a license but was subject to fire inspection and review of health records by a designated official.

2. Concomitantly, part of the structure was used for living purposes, dating to 1959, first by my sister and brother in law in the late 1950's, and by my brother and his family in 1962 as noted in the attachments hereby attached and made a part of the record.

While living in the Cottage in the decade of the 1960's, I personally recall reading the great and lengthy novel, The Brothers Karamozov, by Dostoevsky, especially that magnificent chapter, "The Grand Inquisitor".

3. With the retirement of Mrs. Worley in 1973 from teaching, the use of the cottage evolved. My sister and brother in law used the entire structure as a living unit in the era 1973-74, as set forth in Attachment # 1.

4. Subsequently, various family members and some friends or acquaintances used the whole structure or part of it for living purposes. For instance, my brother and his family used the upper level in 1962 as stated in Attachment # 2. Others used the property intermittently since that date, as I attested to above. Following use of the total building in 1973-74 (as stated in Attachment #1), others have used the property as a living quarters.

We are not able to produce written confirmation of all of these assertions, since we do not have access to records. My Mother deceased in 1996, and her affairs were liquidated shortly thereafter, along with many of her records—since we had no hint or indication that they would have to be referenced. The affidavits in Attachments #1, #2, and #3 attest to the recollection of various family members.

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5. By personal recollection of one family member who lived on the property or next door all her adult life (as set forth in Attachment # 3), it would appear that the structure was continuously used specifically with a residential motif from 1973 to the present with some lapses of several months at times, but no lapse of a duration of two years. Some friend or family member seemed to seek out the privilege of staying there. Several were relatives who as young couples had insufficient money at that time to buy a house. Some did not even have a job, and others were employed in jobs with low pay.

6. From personal observation, we/I can attest to the use of the structure from late 1976 to the present time. It has been continuously used as a living area for family—largely—and some friends or acquaintances in the community or perhaps known through some church ties.

7. The applicants, therefore, believe it would be only fair and equitable to recognize that:

A. The subject building—the Cottage—was built when it was legal, and, we believe, more than one living unit could be located on a parcel of the size of about five acres.

B. There has been a continuous use of the property in dual roles at first but subsequently fully as a living residential unit, starting in 1973.

Thus its use would qualify to be “grandfathered in” and the Board of Zoning Appeals (BZA) should do so by reversing the Notice of Zoning Violation and affirming that the present use is a consistent and permitted use to “flow with the building”.

The applicants note that while we are willing to seek out copies of the Zoning Ordinances existent in 1952 and subsequent years to support our assertions, my wife and I were informed that the status of the Planning Commission’s Library was such that it was not readily feasible to do so. See accompanying letter.

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Zoning Administration Div.

BUT WE/I HEREBY RESERVE THE RIGHT TO AMEND THIS APPLICATION BASED UPON INFORMATION TO BE SUPPLIED BY STAFF FROM THEIR STUDY AND ALSO FROM MY OWN PERSONAL STUDY USING INFORMATION DERIVED FROM FURTHER STUDY OF PAST ZONING ACTIONS, A STUDY OF STATE STATUES, AN INDEPENDENT REVIEW OF ORDINANCES AND OFFICIALS ACTIONS IN FAIRFAX COUNTY AND THE COMMONWEALTH OF VIRGINIA AND CITING OF CURRENT EVENTS THAT COULD BE CONSTRUED TO SET A PRECEDENT THAT COULD BE APPLIED TO OUR APPEAL AS A RESULT OF ACTIONS TAKEN BY THE BOARD OF ZONING APPEALS.

In further support of our appeal to the BZA, citing the principle of "fairness and equity", we note the following.

For instance, the report circulated that the BOS met in executive session on Monday, July 31, 2006 to consider the implications of charges that certain builders had erected single family residences higher than the stipulated ordinance height of 35 feet. The Washington Post reported that: (1) Homes already occupied would not be challenged. (2) Homes over the 35 height limit could be modified by restructuring the roof to comply with the ordinance or by using fill dirt to build up the land surface around the home to bring it into compliance with the zoning ordinance requirement. Unstated was the implication that zoning staff would more strictly analyze any application for a building permit to determine and require that the homes meet the 35 feet height limit.

Chairman of the Board of Supervisors Gerry Connolly was quoted as saying: "There are some people this leaves in limbo. . . . If you don't have an occupancy permit, your builder will have to fix the problem."

[The Wasington Post, August 1, 2006, Metro Section, P. B-1].

On Sunday, August 13, 2006, The Washington Post also printed another article on the issue of houses built with a height that exceeded the approved 35 feet cited in the zoning ordinance and building code. It reiterated the substance of the previous article.

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[The Washington Post, August 13, 2006, Metro Section, P. C-1].

Not stated in any of the public discussion, but lingering in the public consciousness, is the question whether the following can be reasonably implied: That the existing homes with roof heights that exceed 35 feet in height are in effect “grandfathered in” in terms of permissible building height and that neither the builders nor the homeowners would be required to alter the roof height of the existing occupied properties—those with occupancy permits.

Ah, the “grandfathering” principle.

The Applicants/Appellants strongly assert and feel compelled to vigorously pursue the concept that the use of the property set forth in this statement and bolstered by the attachments herewith presented and made a part of this record strongly supports that the prevailing use of the subject property referenced in this application is in fact “grandfathered in.”

Moreover, the issue of “fairness and equity” is relevant. The perception, bolstered by an old saying, “what’s sauce for the goose is sauce for the gander”, supports the idea that It would only be appropriate to approve the Applicant’s/Appellant’s position and have the BZA reverse the Notice of Violation under any of the legal concepts alluded to above.

A third position is that of claiming a right through “adverse possession”. The continuing use of the property has been overt. Covering some forty-five years, the use has been unabated. We shall elaborate upon this point following more research.

Permit me to recapitulate and elaborate:

1. The subject building was built in 1952. While Applicant does not have in hand a building permit, the structure has existed and been used in various ways over the ensuing years, and I presume, is noted

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on the tax assessment records. It was built on a parcel of land of almost 5 acres.

2. From 1952 through 1973, the subject building was used basically as part of Mrs. Worley's Primary School. As best we can recall, this use as a primary school did not require a permit, but the School was subject to some supervision—the fire department and health inspections, and Mrs. Worley's Primary School was taxed for the personal property therein.

3. Concomitant to use as part of a primary school operation, the second floor of the subject building was also used extensively, dating back to 1959. See Attachment #1.

4. Use was also made of the second floor in the subject building 1962 year, as attested in Attachment # 2. Not included in that statement was an affirmation by attesters that they also used various cooking and cooling devices for storing food.

5. The next door neighbor who was also a former employee of Mrs. Worley's School attests to the dual use of the building over time. See Attachment # 3. The attester states that to the best of her knowledge and recall she believes the structure was used dually as a school and as a residential living unit , with use as a school beginning in 1952, but with use as a residential living unit beginning in 1959. The structure as a whole began to be used as a residential living unit in 1973, and that use has continued with no period of time when it was not occupied or used beyond a couple of months or so, but not exceeding two years.

6. Applicants attest that since the latter part of 1976 We/I have observed the subject property and can attest that it has been continually used for residence purposes with no interval of non-use of more than a couple months, but not exceeding two years.

7. When the subject building was built in 1952, it was situated on about 5 acres of land. Applicant understands that this was a permitted type of use at that time. Further, We/I understand that it

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was permissible at that time to site two living units on a parcel of the size of almost five acres.

8. Further, we/I understand that no special permit or other licensing was required to operate Mrs. Worley's Primary School, except with the fire department and health department reviews on a periodic basis. Applicants/Appellants have knowledge of two other educators who founded similar schools during that era, one of which is still in operation today. With a burgeoning population of World War II veteran families crowding the public schools, private primary schools were much in demand.

9. The concept of "adverse possession" is intriguing and may be applied in concept to the Applicant's/Appellant's concern. While the statute specifically deals with land, the spirit of the statute could be readily applied to the instant case. The use as described has continued over time, well predating the existing the Zoning Ordinance or the oft cited dates of 1978, 1987 or 1989, and we believe should be recognized as a continuous use worthy of "grandfathering in" under the principle of "adverse possession".

10. Applicants/Appellants therefore petition the planning staff in review and the Board of Zoning Appeals on appeal in a hearing for relief from the zoning violation charge. We assert that the charge should be reversed and dismissed with prejudice—we understand that to mean it cannot ever be filed again. We ask that the BZA find that the charge of a zoning violation is not well founded, that the charge be dismissed/reversed, and that the record show that the present use of the subject property—namely, a garage/cottage building used variously over time but used now for residential living purposes—be permitted to continue, recognizing that the described use follows the building and that the principle of grandfathered use is recognized and applied to the Applicant's appeal.

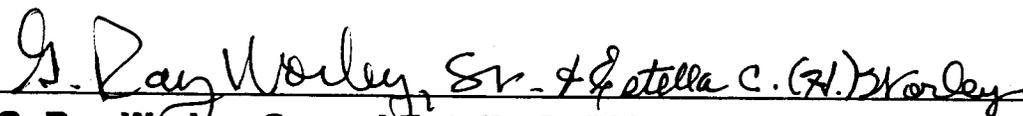
11. Applicants/Appellants ask that the disposition of this application be reduced to writing and filed among the land records of Fairfax County, setting forth that Applicants/Appellants may indeed recover their "quiet enjoyment" of their property, including the continued use

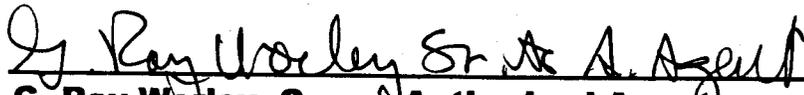
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as a residential living unit and with the "garage/cottage" as a approved nominally nonconforming (by present Zoning Ordinance definitions) but historically an acceptable utilization of their garage/cottage and thus a permitted continued use of their property following the historic pattern—i. e., grandfathered in.

12. Applicants/Appealers submitted the affidavits with original signatures on or about August 18, 2006 in conjunction with a Notice Zoning Violation issued of record on July 19, 2006. When the initial notice of violation was rescinded and notice sent of that action, the original, signed affidavits were not returned. Applicants/Appealers hereby reference the copies of the original signed affidavits which were entrusted into the custody of the Planning Staff, and ask that they be incorporated into this instant submission of application to appeal a notice of zoning violation and be hereby incorporated by reference.

Using what seems to a layman at law to be a quaint expression, ***We ask for it.***


G. Ray Worley, Sr. and Estella C. (H.) Worley


G. Ray Worley, Sr. as Authorized Agent

P. S. 1. G. Ray Worley, Sr. is joined by Estella C. (H.) Worley in submitting this appeal/application to the BZA and is acting and will be acting as authorized agent in presenting this application and pursuing the steps necessary to perfect our appeal, with the caveats noted above.

P. S. 2. Please note: G. Ray Worley, Sr. reserves the right to seek legal counsel and to be joined by an attorney of choice in any hearing

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before the Planning Commission or the BZA or to have an attorney of choice to present testimony and opinions in this instant "case".

P. S. 3. This letter affirms and serves notice that we/l reserve the right to amend this application based upon further study and in reaction to successive actions taken by Planning Staff in reference to this Application for Appeal.

GRWSr.

[Explanatory note: When Estella H. Worley approached retirement after 44 years of teaching with 27 years in Fairfax County Schools, she was advised to "unify" her name to conform to her social security identification. Although she had alternately used Estella C. (her middle initial) for many years, she did sign all her retirement papers as Estella H. Worley, although in 1996 she had used Estella C. Worley on the settlement papers effecting transfer of the ownership of the subject property. We purpose to have our title changed in due course.]

[TO STATE CLEARLY LANGUAGE ON FRONT PAGE OF APPLICATION.

NATURE OF THE APPEAL:

APPEAL BASED ON SEVERAL CRITERIA STATED IN ENCLOSED LETTER, (1) AGGRIEVED USE IS GRANDFATHERED IN, (2) USE IS JUSTIFIED BY "FAIR AND EQUITABLE" TREATMENT, BASED ON RECENT BOS ACTIONS AND IN LAW, AND (3) USE IS JUSTIFIED BY APPLYING THE CONCEPT OF ADVERSE POSSESSION. WE SEEK WITHDRAWAL, DISMISSAL, RESCISSION OR REVERSAL OF ALLEGED VIOLATON.

HOW IS THE APPLICANT AN AGGRIEVED PERSON:

APPLICANTS/APPELLANTS ARE OWNERS OF THE PROPERTY AND WOULD BE DEPRIVED OF A HISTORIC USE OF THE PROPERTY AND NEGATIVELY IMPACTED IN MANY WAYS. SEE ATTACHED LETTER 1

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Attachment #1

ROBERT A. NOLAN, COL. USAF, RET.
7402 GREENWICH ROAD
NOKESVILLE, VA 29180
704.754.4881

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SEP 20 2006

JULY 5, 2006

Zoning Administration Div.

TO WHOM IT MAY CONCERN:

RE: 2537 GALLOWS ROAD
DUNN LORING, VA 22027
USE OF GARAGE APT/COTTAGE
AS A RESIDENCE.

From 1942 to 1973, I served in the United States Army and the United States Air Force. During most of that time, I was accompanied by my wife, the late Martha Anne (Worley) Nolan, and our three children as I was transferred to various assignments abroad and here at home. When moving between assignments we usually spent time at the home of her parents, Mr. and Mrs. G. Frazier Worley at 2537 Gallows Road, Dunn Loring, Virginia. Also, as circumstances permitted, we usually spent our vacations with them. During these visits the availability of the garage/apartment (cottage is how we referred to it) was most appreciated as the Worley home was not especially large and was already accommodating other family members in addition to Mr. and Mrs. Worley.

In 1951 I was assigned to Korea and for the next year my family lived at her parent's homestead. While in Korea it was a comfort to me to know that my family was being accommodated at her parent's home.

A subsequent assignment in 1959 brought us to the Washington area where I was assigned to the Pentagon. During the five or so months it took for us to select a location and acquire a home we again relied on the utilization of the cottage at my wife's parent's home.

While serving as the United States Defense Attache to the Republic of Pakistan in 1973, it became time for me to retire from active duty and, accordingly, I was transferred back to the Washington area for retirement processing. We moved into the cottage where we remained into the following year while we pondered our next move. We rediscovered the demands of home responsibilities, such as painting, repairing commodes and the appliances. Finally, in mid 1974, we bought a home in Virginia and moved out of the cottage, of which our family has many fond memories.

My wife and I considered it most fortunate that over a long period of time, extending from the early 50's to the mid 70's, when we had need for

temporary or transitional living space, the cottage was always available as an option—even serving as a place for our children to put on family entertainment. But most of all, it was available and a great option when we needed a temporary haven.

Within what is permitted under the law, whether by waiver of other means, I strongly support the pattern of use which we helped establish for the cottage and advocate that it be permitted to continue. Should not the pattern of use be "grandfathered" in terms of permitted use?

Robert A. Nolan
Robert A. Nolan, Col. USAF, Ret.

Date: July 05, 2006

State of Virginia
County of Fairfax

On July 05, 2006, Robert A. Nolan appeared before me personally and provided satisfactory demonstration of his identity in my presence and signed the above referenced document.

WITNESS my hand and official seal.

Signature *[Signature]*
A Notary

My Notary authorization expires April 30, 2008



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Attachment # 2

**FRAZIER C. & JO ANN WORLEY
44478 Oakmont Manor Square
Ashburn, VA 20147**

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Zoning Administration Div.

8/11/08

TO WHOM IT MAY CONCERN

**RE: UTILIZATION OF PROPERTY AT
2537 GALLOWS ROAD
DUNN LORING, VA.**

We are long time residents of Dunn Loring. FCW was born there. JAW moved to Dunn Loring as a child of seven (7) years old. We lived there extensively until 1958, when we relocated to 1216 Franklin St, Alexandria, VA 22313.

Growing up in the Dunn Loring area, we observed development and land use. While we lived for several years in Alexandria in part to be near the employment area for FCW, we did move back to Dunn Loring in 1962, only moving as noted above as our family needs changed.

In fact, I, Frazier C. Worley, as a part of being able to use a lot carved out of my parents home place, now identified as 2534 Sandburg Street, did clear the street area now identified as Sandburg Street, starting at Cottage Street, and stretching northward to the intersection of Timber Valley Court, and beyond to the northern most edge of the property at 2534 Sandburg Street. It was a momentous task, and I did much of it by hand—sawing down trees, cleaning the brush, but did use larger equipment to carry off the debris.

When we had to sell our home in Alexandria, but before our newly moved house at 2534 Sandburg was fully completed—we had transferred a home initially built and located in the footprint of what is now I-66—, we needed a place to stay. Having grown up at 2537 Gallows Road, the subject property of this statement, I approached my parents, G. Frazier and Bessie B. Worley, about using the room over the classroom in the Cottage for sufficient time to help us get our property at 2534 Sandburg developed and ready for occupancy. They agreed.

We used the referenced room over the classroom in the Cottage, taking advantage of a stair and outside door. Our stay was modestly in length extending from about January 2, 1962 to June 18, 1962.

While we can attest to living in the Cottage, we also have an opinion about the use of the building in the present day. The family always construed that the Cottage was lawfully used, since it was part of a larger parcel and

apparently was not in violation of any perceived ordinances, since my Mother operated Mrs. Worley's Primary School there for many years, from 1952 until about 1973. I recall my sister and her husband, Col. Robert A. and Mrs. Nolan, living in the Cottage, utilizing the whole building, in about 1973-74. Others have similarly used the upper room but the Nolans started the continuous use of the whole property for living purposes and that pattern has persisted over the ensuing years.

Therefore, we strongly support the advocated position that any prior and extensive use of the Cottage be acknowledged and "Grandfathered in" and that the existing use be recognized as an acceptable and legal use, falling within the guidelines of a permitted use.

We hereby sign as individuals and attest to the above statement.

Frazier C. Worley Jo Ann Worley
Frazier C. Worley Jo Ann Worley

Date: August 11, 2006

State of Virginia
At Large

On August 11, 2006 Frazier C. Worley appeared before me personally and provided satisfactory demonstration of his identity in my presence and attested under oath to and signed the above referenced document.

WITNESS my hand and official seal.

Signature Anita M. Comer
A Notary

My Notary authorization expires January 31, 2010

Date: August 11, 2006

CONTINUED

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State of Virginia
At Large

On August 11, 2006 Jo Ann Worley appeared before me personally and provided satisfactory demonstration of his identity in my presence and attested under oath to and signed the above referenced document.

WITNESS my hand and official seal.

Signature

Quita M. Comer

A Notary

My Notary authorization expires

January 31, 2010



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Attachment # 3
LOUISE B. (WORLEY) PLAUGHER
2539 Gallows Road
Dunn Loring, VA 22027

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SEP 20 2006

Zoning Administration Div

8/11/06

TO WHOM IT MAY CONCERN:

Re: Use of property at 2537 Gallows Road
About alleged zoning violation

I, Louise B. (Worley) Plaugher, have been a resident of Dunn Loring, Virginia all of my life, spanning over 70 years. I probably hold the record as the longest continuous resident of Dunn Loring. I attended Fairfax County Public Schools, raised six children here, and worked most of my adult life in Dunn Loring. I lived at 2537 Gallows Road from birth until 1962 when my husband and I moved to a newly moved and remodeled house at 2539 Gallows Road, where I live today.

In the late 1940's, my Mother, Bessie B. Worley, a long time primary school teacher, fulfilled a life long dream by establishing Mrs. Worley's Primary School at 2537 Gallows Road, Dunn Loring, Va. [Interestingly, several other friends in the area pursued the same plan, establishing reputable and well known Kindergarten and Primary Schools, one of which still exists today.] Mother started teaching in her home. In 1952, my Mother, Bessie B. Worley, and Father, G. Frazier Worley, built a garage-type building, which we styled as a cottage, incorporating it into our home place on about 5 acres of land. Mother used this for school purposes. I worked with my Mother in her school as an assistant and later as a teacher and operator, involving my own property as part of the process and then as a separate entity, operating under a process involving fire inspections and health inspections by Fairfax County personnel. I do not recall that we were required to be licensed then, being considered to be "Grandfathered in", and I continued the tradition of child care in my own home until I retired in 1985.

During that period of time—from 1952–1973, the Garage/Cottage was used in a dual role. The first floor was used predominantly as a classroom, whereas the upper room (a second floor) was often used as an available living area. Many family members made use of the property—siblings, children, nieces and nephews and grandchildren—as well as other family members and friends.

In 1973, my Mother, then a senior citizen, retired from her full time teaching operation, continuing as a tutor and teacher of music—she taught the piano and theory.

In 1973, my sister and her husband—Colonel and Mrs. Robert A. Nolan—returned from an exhausting tour of service as a military attaché in Islamabad, Pakistan. While their belongings were in process of being shipped from Pakistan and while they were looking for a suitable property to occupy in retirement, they stayed in the Cottage, using the full facility, both floors, extending into 1974.

After the Nolans moved to their permanent home, various people—family members and friends—used the both floors of the facility on a continuing basis, sometimes as a transitional place to stay, but others for a more prolonged period. ~~Some of the users of the Cottage were friends of my children and maybe former students in my Mother's School—I do not have specific recall , but various people did reside there on a continuing basis over some months and some—my son, for instance—for years.~~

The family had always considered the Cottage as an important asset and used the property as a conveniently available residential unit. Because of the long history of use, and the continuous record of varied use, I, as a next door neighbor, do support the continuing use of the property in the broad and varying manner of residential use in which the property has been used for over a half a century.

Louise B. (Worley) Plaughter

Louise B. (Worley) Plaughter
Owner and resident at 2539 Gallows Road,
Dunn Loring, VA 22027

Date: August 11, 2006

State of Virginia
At Large

On August 11, 2006, Louise B. (Worley) Plaughter appeared before me personally and provided satisfactory demonstration of her identity in my presence and upon giving an oath attested to and signed the above referenced document.

WITNESS my hand and official seal.

Signature Quita M. Comer
A Notary

My Notary authorization expires January 31, 2010

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Zoning Administration Division

THE G. RAY WORLEYS
2537 Gallows Road
Dunn Loring, Va 22027
703.560.3010; 703/560/7655 FAX
grworley@erols.com

COPY

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8/16/06

Ms. Eileen M. McLane

Zoning Administration Div.

ZONING ADMINISTRATOR

Zoning Administration Division

Department of Planning and Zoning

12051 Government Center Parkway, Suite 807

Fairfax, VA 22035

703.324.1314

Re: Notice of Violation of Zoning Ordinance Sec. 2-501
Issued by Susan M. Epstein, Senior Zoning Inspector
Dated: July 19, 2006
A Legislative and other searches is hereby requested

Dear Ms. McLane:

In a visit to your office suite Room 807, we were graciously received and assisted in pursuing our interests in responding to the above referenced Notice of Violation Issue.

We had intended to avail ourselves of the Planning Commission Library to research the legislative history of Article 15 and other portions of the Zoning Ordinance that might inform and guide our appeal. We were informed that the status of the Library was such that it was not readily feasible to grant access at that time because: (1) Plans were afoot to relocate the Library. (2) Upon a written request, the staff would accommodate our needs by performing the search of the legislative history of any relevant portions of the Zoning Ordinance. We were cautioned, however, that such a search might not be completed before several months.

Here, then, is the substance of our request for a search of the legislative history of pertinent ordinances and cases that might inform and guide our application and appeal.

We would request the following:

1. A copy of pertinent sections of all zoning ordinances since 1942, and any legislative comments of record, plus the legislative history of relevant zoning ordinances, with emphasis upon Article 15 as enumerated in the existing ordinance, with especial attention to Zoning Amendment #89-185 and any Board of Supervisor comments in discussion of adopting the Amendment.

2. Any and all BZA actions on zoning violation charges similar to the action item of this comment.

3. Any and all BOS actions and legislative commentary that might be relevant.

4. Any inter-related phrases, clauses, references, or relationships that might be expressed or inferred in any ordinance or citation, whether in ordinances or at law, including legislative history and legislative commentary.

In the quaint language of law, WE ASK FOR IT.

G. Ray Worley, Sr. Estella C. (H.) Worley 8-16-06
G. Ray Worley, Sr. and Estella C. (H.) Worley

G. Ray Worley as Authorized Agent 8-16-06
G. Ray Worley, Sr., Authorized Agent

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Zoning Administration Div.

ZONING ORDINANCE PROVISIONS**1978 Zoning Ordinance:****Sect. 2-501, Limitation on the Number of Dwelling Units on a Lot**

There shall be not more than one (1) dwelling unit on any one (1) lot, nor shall a dwelling unit be located on the same lot with any other principal building. This provision shall not be deemed, however, to preclude multiple family dwelling units as permitted by the provisions of this Ordinance; an accessory use or accessory service use as may be permitted by the provisions of Article 10; an accessory dwelling unit as may be approved by the BZA in accordance with the provisions of Part 9 of Article 8; single family detached dwellings in a rental development; or a condominium development as provided for in Sect. 409 above; or antennas and/or related unmanned equipment structures for a mobile and land based telecommunications facility mounted on a utility distribution pole, utility transmission pole or light/camera standard in accordance with the provisions of Sect. 514 below.

In addition, in all districts, the Board or BZA, in conjunction with the approval of a special exception or special permit use, may allow dwelling units for a proprietor, owner and/or employee and his/her family whose business or employment is directly related to the special exception or special permit use. Such dwelling units may either be located within the same structure as the special exception or special permit use or in separate detached structures on the same lot. If located in separate detached structures, such dwelling units shall meet the applicable bulk regulations for a principal structure set forth in the specific district in which located, and any locational requirements set forth as additional standards for a special exception or special permit use shall not be applicable to detached structures occupied by dwelling units.

Par. 17 of Sect. 8-901, Group 9 Special Permit Uses

17. Accessory dwelling units

Sect. 8-918, Additional Standards for Accessory Dwelling Units

As established by the Fairfax County Board of Supervisors' Policy on Accessory Dwelling Units (Appendix 5), the BZA may approve a special permit for the establishment of an accessory dwelling unit with a single family detached dwelling unit but only in accordance with the following conditions:

1. Accessory dwelling units shall only be permitted in association with a single family detached dwelling unit and there shall be no more than one accessory dwelling unit per single family detached dwelling unit.
2. Except on lots two (2) acres or larger, an accessory dwelling unit shall be located within the structure of a single family detached dwelling unit. Any added external entrances for the accessory dwelling unit shall be located on the side or rear of the structure.

On lots two (2) acres or greater in area, an accessory dwelling unit may be located within the structure of a single family detached dwelling unit or within a freestanding accessory structure.

3. The gross floor area of the accessory dwelling unit shall not exceed thirty-five (35) percent of the total gross floor area of the principal dwelling unit. When the accessory dwelling unit is located in a freestanding accessory structure, the gross floor area of the accessory dwelling unit shall not exceed thirty-five (35) percent of the gross floor area of the accessory freestanding structure and the principal dwelling unit.
4. The accessory dwelling unit shall contain not more than two (2) bedrooms.
5. The occupancy of the accessory dwelling unit and the principal dwelling unit shall be in accordance with the following:
 - A. One of the dwelling units shall be owner occupied.
 - B. One of the dwelling units shall be occupied by a person or persons who qualify as elderly and/or disabled as specified below:
 - (1) Any person fifty-five (55) years of age or over and/or (2) Any person permanently and totally disabled. If the application is made in reference to a person because of permanent and total disability, the application shall be accompanied by a certification by the Social Security Administration, the Veterans Administration or the Railroad Retirement Board. If such person is not eligible for certification by any of these agencies, there shall be submitted a written declaration signed by two (2) medical doctors licensed to practice medicine, to the effect that such person is permanently and totally disabled. The written statement of at least one of the doctors shall be based upon a physical examination of the person by the doctor. One of the doctors may submit a written statement based upon medical information contained in the records of the Civil Service Commission which is relevant to the standards for determining permanent and total disability.

For purposes of this Section, a person shall be considered permanently and totally disabled if such person is certified as required by this Section as unable to engage in any substantial gainful activity by reasons of any medically determinable physical or mental impairment or deformity which can be expected to result in death or can be expected to last for the duration of the person's life.
 - C. The accessory dwelling unit may be occupied by not more than two (2) persons not necessarily related by blood or marriage. The principal single family dwelling unit may be occupied by not more than one (1) of the following:
 - (1) One (1) family, which consists of one (1) person or two (2) or more persons related by blood or marriage and with any number

of natural children, foster children, step children or adopted children.

- (2) A group of not more than four (4) persons not necessarily related by blood or marriage.
6. Any accessory dwelling unit established for occupancy by a disabled person shall provide for reasonable access and mobility as required for the disabled person. The measures for reasonable access and mobility shall be specified in the application for special permit. Generally, reasonable access and mobility for physically disabled persons shall include:
 - A. Uninterrupted access to one (1) entrance; and
 - B. Accessibility and usability of one (1) toilet room.
7. The BZA shall review all existing and/or proposed parking to determine if such parking is sufficient to meet the needs of the principal and accessory dwelling units. If it is determined that such parking is insufficient, the BZA may require the provision of one (1) or more off-street parking spaces. Such parking shall be in addition to the requirements specified in Article 11 for a single family dwelling unit.
8. The BZA shall determine that the proposed accessory dwelling unit together with any other accessory dwelling unit(s) within the area will not constitute sufficient change to modify or disrupt the predominant character of the neighborhood. In no instance shall the approval of a special permit for an accessory dwelling unit be deemed a subdivision of the principal dwelling unit or lot.
9. Any accessory dwelling unit shall meet the applicable regulations for building, safety, health and sanitation.
10. Upon the approval of a special permit, the Clerk to the Board of Zoning Appeals shall cause to be recorded among the land records of Fairfax County a copy of the BZA's approval, including all accompanying conditions. Said resolution shall contain a description of the subject property and shall be indexed in the Grantor Index in the name of the property owners.
11. The owner shall make provisions to allow inspections of the property by County personnel during reasonable hours upon prior notice.
12. Special permits for accessory dwelling units shall be approved for a period not to exceed five (5) years from the date of approval; provided, however, that such special permits may be extended for succeeding five (5) year periods in accordance with the provisions of Sect. 012 above.

13. Notwithstanding Par. 5 of Sect. 9-012, any accessory dwelling unit approved prior to July 27, 1987 and currently valid may be extended in accordance with the provisions of this Section and Sect. 012 above.

Paragraphs 1 and 12 of Sect. 10-104, Location Requirements (Accessory Uses, Accessory Service Uses and Home Occupations)

1. If an accessory-type building is attached to a principal building by any wall or roof construction, it shall be deemed to be a part of the principal building and shall comply in all respects with the requirements of this Ordinance applicable to a principal building, except as qualified in Sect. 2-412.
12. The following regulations shall apply to the location of all freestanding structures or uses except those specifically set forth in other paragraphs of this Section:
 - A. For purposes of determining height, the height of an accessory structure shall be measured in accordance with Par. 4 of Sect. 10-103 above.
 - B. An accessory structure or use, which does not exceed seven (7) feet in height, may be located in any part of any side or rear yard, except as qualified in Sect. 2-505.
 - C. No accessory structure or use, except a statue, basketball standard or flagpole, shall be located (a) in any minimum required front yard on any lot or (b) in any front yard on any lot containing 36,000 square feet or less. When located in a front yard, basketball standards shall not be located closer than fifteen (15) feet to a front lot line and twelve (12) feet to a side lot line, and shall not be used between the hours of 8:00 PM and 8:00 AM.
 - D. No accessory structure or use which exceeds seven (7) feet in height shall be located in any minimum required side yard.
 - E. No accessory structure or use which exceeds seven (7) feet in height shall be located closer than a distance equal to its height to the rear lot line or located closer than a distance equal to the minimum required side yard to the side lot line.
 - F. On a corner lot, the rear lot line of which adjoins a side lot line of a lot to the rear, no accessory structure or use which exceeds seven (7) feet in height shall be located:
 - (1) Nearer to any part of the rear lot line that adjoins the side yard on the lot to the rear than a distance equal to the minimum required side yard on such lot to the rear, or
 - (2) Nearer to the side street line than a distance equal to the minimum required front yard on the lot to the rear.

Paragraphs 6E and 9 of Sect. 15-103, Regulations Controlling Other Nonconforming Uses

6. A nonconforming building or building in which a nonconforming use is conducted that is destroyed or damaged by any casualty to an extent not exceeding fifty (50) percent of its

current appraised value according to the records of the Department of Tax Administration, exclusive of foundations, may be restored within two (2) years after such destruction or damage but shall not be enlarged except as provided in Sect. 102 above. If any such building is so destroyed or damaged to an extent exceeding fifty (50) percent of its value as above, it shall not be reconstructed except:

- E. If a building or use in the C-5, C-6, C-7 or C-8 District was a conforming use immediately prior to December 12, 1989, the effective date of Zoning Ordinance Amendment #89-185, and was made nonconforming by Zoning Ordinance Amendment #89-185 solely on the basis of one or more of the following conditions, or if a building or use was constructed pursuant to a site plan, approved building permit, approved special permit or approved special exception grandfathered from Zoning Ordinance Amendment 89-185, and such building or use is made nonconforming by Zoning Ordinance Amendment #89-185 solely on the basis of one or more of the following conditions, such building or use may be reconstructed provided that construction is commenced and diligently prosecuted within four (4) years after the aforesaid destruction or damage; provided, such period may be extended by the Zoning Administrator if it is determined that the owner has made a good faith attempt to commence construction within four (4) years after the aforesaid destruction or damage:
- (1) The building is nonconforming on the basis of floor area ratio; or
 - (2) The use is an office in the C-5, C-6, C-7 or C-8 District and fails to comply with the use limitations for office uses set forth in the district.
9. The rights pertaining to a nonconforming use or building shall be deemed to pertain to the use or building itself, regardless of the ownership of the land or building on or in which such nonconforming use is conducted or of such nonconforming building or the nature of the tenure of the occupancy thereof.

Definitions of ACCESSORY USE; DWELLING; DWELLING, SINGLE FAMILY; DWELLING UNIT; GARAGE; LOT and NONCONFORMING BUILDING OR USE as set forth in Article 20 of the Zoning Ordinance:

ACCESSORY USE: Accessory uses as permitted by this Ordinance are subject to the provisions of Part 1 of Article 10. An accessory use is a use or building which:

1. Is clearly subordinate to, customarily found in association with, and serves a principal use; and
2. Is subordinate in purpose, area or extent to the principal use served; and
3. Contributes to the comfort, convenience or necessity of the occupants, business enterprise or industrial operation within the principal use served; and
4. Is located on the same lot as the principal use, except any building that is customarily incidental to any agricultural use shall be deemed to be an accessory use, whether or not it is situated on the same lot with the principal building.

DWELLING: A building or portion thereof, but not a MOBILE HOME, designed or used for residential occupancy. The term 'dwelling' shall not be construed to mean a motel, rooming house, hospital, or other accommodation used for more or less transient occupancy.

DWELLING, SINGLE FAMILY: A residential building containing only one (1) DWELLING UNIT.

DWELLING UNIT: One (1) or more rooms in a residential building or a residential portion of a building which are arranged, designed, used, or intended for use as a complete, independent living facility which includes permanent provisions for living, sleeping, eating, cooking and sanitation. Occupancy shall be in accordance with the provisions of Sect. 2-502.

GARAGE: An accessory building or part of a principal building used primarily for the storage of passenger vehicles as an accessory use and having no provision for repairing or servicing such vehicle for profit.

LOT: For the purpose of this Ordinance, a parcel of land that is designated at the time of application for a special permit, a special exception, a Building Permit, or Residential/Non-Residential Use Permit, as a tract all of which is to be used, developed or built upon as a unit under single ownership. A parcel of land shall be deemed to be a lot in accordance with this definition, regardless of whether or not the boundaries thereof coincide with the boundaries of lots or parcels as shown on any map of record.

NONCONFORMING BUILDING OR USE: A building or use, lawfully existing on the effective date of this Ordinance or prior ordinances, which does not conform with the regulations of the zoning district in which it is located, except as may be qualified by Sect. 15-101 of this Ordinance.

1941 Zoning Ordinance:

Sect. V, Par. A1, Use Regulations, Suburban Residence District

- A. Use Regulations: In a Suburban Residence District no building or structure shall be erected, altered or used, and no land shall be used unless otherwise provided in this ordinance except for one or more of the following uses:
1. Any use permitted in the Rural Residence District and subject to the same conditions in Section IV, A.

Sect. IV, Par. A1 and A7, Use Regulations, Rural Residence District

- A. Use Regulations: In a Rural Residence District no building or structure shall be erected, altered or used, and no land shall be used unless otherwise provided in this ordinance, except for one or more of the following uses:
1. Single family detached dwelling.
 2. Private garage which shall not be used to house more than two vehicles in excess of those used by the residents of the premises in which the garage is located.

**DEFINITIONS OF ACCESSORY BUILDING; DWELLING, SINGLE FAMILY;
GARAGE, PUBLIC OR PRIVATE and LOT as set forth in Sect. 1**

ACCESSORY BUILDING: A subordinate building on the same lot with a main building, the use of which is incidental to that of the main building, such as a garage or stable.

DWELING, SINGLE FAMILY: A dwelling constructed to accommodate only one family, and containing only one housekeeping unit.

GARAGE, PUBLIC OR PRIVATE: A building used for the housing or storing of motor driven vehicles, in which no commercial repair work is done.

LOT: A separate piece or parcel of land of record having frontage on a street or road, legal access thereto by means of a right-of-way, whose area, in addition to the parts thereof occupied or which may hereafter be occupied by a building and buildings accessory thereto, is sufficient to furnish the yards, and minimum area required for compliance with this ordinance. The word "lot" shall include "building site."

COUNTY OF ...

DATE OF ENTRY: 2/12/51
 SUBDIVISION: ...
 SECTION: ...

DESCRIPTION	QUANTITY	UNIT	PRICE	TOTAL
CONCRETE
...

LOCATION AND IMPROVEMENTS	ACRES	APPROX. VALUE
...

TYPE	ROOF	FLOORING	SIZE
BRICK	SHINGLE	CEMENT	...
...

DATE	SALE PRICE	ACRES	APPROX. VALUE
2/30/51

DATE	SALE PRICE	ACRES	APPROX. VALUE
...



DATE	SALE PRICE	ACRES	APPROX. VALUE
...

COUNTY REAL ESTATE SUBDIVISION

STATION 2

ADDITIONAL

LOTS

APPROXIMATE VALUE OF MAIN BUILDING

173,171

VAL. BUILT 26,937
 UNIMPROVED 9,117
 IMPROVED 17,820

APPROXIMATE VALUE OF MAIN BUILDING 173,171

APPROXIMATE VALUE	APPROXIMATE VALUE
8,477	1,382,000
19,353	57,335
17,820	97,935
TOTALS	1,437,270

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of the zoning restriction and continuing since that time in non-conformance to the ordinance.'" C. & C., Inc. v. Semple, 207 Va. 438, 439 n.1, 150 S.E.2d 536, 537 n.1 (1966) (citation omitted); see also Code § 15.2-2307. When a locality challenges a use as illegal, the locality "has the initial burden of producing evidence to show the uses permitted in the zoning district in which the land is located and that the use of the land is not a permitted use." Masterson v. Board of Zoning Appeals, 233 Va. 37, 47, 353 S.E.2d 727, 734 (1987). The burden then shifts to the landowner to establish that the use is a lawful nonconforming use. Id. The landowner "has both the burden of initially producing evidence tending to prove a lawful nonconforming use and the burden of persuading the fact-finder." Knowlton v. Browning-Ferris Indus. of Virginia, Inc., 220 Va. 571, 574, 260 S.E.2d 232, 235 (1979).

The final decision of a board of zoning appeals with regard to "an order, requirement, decision or determination of a zoning administrator . . . in the administration or enforcement of any ordinance . . . [is] presumed to be correct" on appeal to a circuit court. Code § 15.2-2314; accord Lamar Co., LLC v. Board of Zoning Appeals, 270 Va. 540, 545, 620 S.E.2d 753, 755-56 (2005). "The appealing party may rebut that presumption by proving by a

preponderance of the evidence . . . that the board of zoning appeals erred in its decision." Code § 15.2-2314.

The "preponderance of the evidence" standard, however, pertains only to questions about the sufficiency of the record to prove a particular fact. Lamar, 270 Va. at 546, 620 S.E.2d at 756. When, as in the case before us, the issue is a question of law, i.e., the interpretation of the 1941 Ordinance, the appealing party must show that the board either applied "erroneous principles of law" or that its decision was "plainly wrong and in violation of the purpose and intent of the zoning ordinance." Id. at 545, 620 S.E.2d at 756 (quoting City of Suffolk v. Board of Zoning Appeals, 266 Va. 137, 142, 580 S.E.2d 796, 798 (2003)). On appeal to this Court, a circuit court's determination affirming the final decision of a board of zoning appeals is accorded the same presumption of correctness. Patton v. City of Galax, 269 Va. 219, 229, 609 S.E.2d 41, 46 (2005).

The 1941 Ordinance was a permissive zoning ordinance. County of Fairfax v. Parker, 186 Va. 675, 688, 44 S.E.2d 915 (1947). Under such an ordinance "only those uses which are specifically named are permitted, and so the burden is on the property owner to show that the use he proposes is one that is included or permitted." Id. at 684, 44 S.E.2d

at 13 (citation omitted). Thus, in order to prevail, the McCarthys had to show that the 1941 Ordinance permitted, in the Agricultural District, multiple single-family dwellings on a lot. In order to determine if the garage apartment was permitted on the subject property under the 1941 Ordinance, the definition of the term "lot" must be examined:

A piece or parcel of land abutting on a street whose area, in addition to the parts thereof occupied or which may hereafter be occupied by a building and buildings accessory thereto, is sufficient to furnish the yards, and minimum area required for compliance with this ordinance. The word lot shall include building site.

1941 Ordinance § I(13).

We agree with the County's argument that, under the definition of the term "lot" in the 1941 Ordinance, only one principal dwelling was permitted on a single lot. The critical portion of the definition is the clause "in addition to the parts thereof occupied or which may . . . be occupied by a building and buildings accessory thereto." (Emphasis added.) This clause limited the number of principal buildings permitted on a single lot to one building but permitted more than one accessory building. Thus, a lot consisted of a piece of land abutting on a street whose area, in addition to the area occupied by a

building and accessory buildings, met the yards and minimum area requirements of the 1941 Ordinance. Although the term "building site" is not defined in the 1941 Ordinance, the definition of the term "lot" specifically included a building site. The McCarthys overlook this portion of the definition in their argument that the term "building site" is separate and distinct from the term "lot."

We agree with the McCarthys' argument that the use of the word "parts" in the definition meant that lots could have different parts or areas occupied by buildings. That conclusion, however, does not change the clear language of the 1941 Ordinance permitting only one principal building on a lot. The word "parts" merely referenced the fact that, if a lot had a principal building and one or more accessory buildings, "parts," as opposed to a "part," of the lot would be occupied by buildings.

This interpretation of the 1941 Ordinance is consistent with the interpretation given to it by officials charged with its enforcement. At the BZA hearing, it was pointed out that such officials had "consistently allowed one dwelling unit per lot or building site under the Ordinance since [19]41." Furthermore, a member of the BZA who had worked in Fairfax County under the 1941 Ordinance stated, "I know of no circumstance at all where legally two

structures, residential, two units, residential units, were permitted on one lot." "A consistent administrative construction of an ordinance by the officials charges with its enforcement is entitled to great weight." Masterson, 233 Va. at 44, 353 S.E.2d at 733; accord Board of Supervisors v. Robertson, 266 Va. 525, 538, 587 S.E.2d 570 578 (2003).

Finally, we point out that the only evidence offered by the McCarthys to show that the garage apartment is a lawful nonconforming use was the testimony of the original landowner's daughter. But, she merely opined that the garage apartment was built in accordance with the 1941 Ordinance. Neither she nor the McCarthys presented any facts or documents to substantiate that opinion. That evidence alone was not sufficient to carry the McCarthys' burden of persuading the fact-finder that the garage apartment was permitted under the 1941 Ordinance and is now a lawful nonconforming use. See Knowlton, 220 Va. at 574, 260 S.E.2d at 235.

Thus, we conclude that the B2A's final decision was "plainly wrong and in violation of the purpose and intent of the zoning ordinance." Masterson, 233 Va. at 44, 353 S.E.2d at 733; Alleghany Enterprises, Inc. v. Board of Zoning Appeals of the City of Covington, 217 Va. 64, 67,

225 S.E.2d 383, 385 (1976). We will therefore reverse the judgment of the circuit court.

III. CONCLUSION

For these reasons, we hold the 30-day period for filing a petition for a writ of certiorari seeking review of a final decision of a board of zoning appeals is a statutory prerequisite or "condition[] of fact" that enables a circuit court to exercise its authority to review the final decision of a board of zoning appeals. Farant Inv. Corp., 138 Va. 427-28, 122 S.E. at 144; see also Nelson, 262 Va. at 284-85, 552 S.E.2d at 77. The filing requirement is not an aspect of the circuit court's subject matter jurisdiction. Thus, the failure to file the petition within the required 30 days is waived if not timely raised during the proceedings. Since the County's failure to timely file its petition for a writ of certiorari was first raised in this Court, the issue is waived and we will not address it.⁵

Furthermore, since the 1941 Ordinance permitted only one principal dwelling on a lot, the County has overcome the presumption of correctness afforded the BZA's final decision. The BZA's decision that the garage apartment is

a lawful nonconforming use was "plainly wrong and in violation of the purpose and intent of the zoning ordinance." Masterson, 233 Va. at 44, 353 S.E.2d at 733.

In reaching this conclusion, we are mindful of the BZA's expressed concern about displacing the garage apartment after approximately 54 years of use. Equitable concerns, however, cannot be a basis for the BZA's decision in this case. See Foster v. Geller, 248 Va. 563, 570, 449 S.E.2d 802, 807 (1994) (legislative bodies "have authorized the use of equitable considerations only when the issue is whether to grant a special use permit").

For these reasons, we will reverse the judgment of the circuit court and enter final judgment in favor of the County.

Reversed and final judgment.

³ In light of our decision, it is not necessary to address the County's argument that our decision in West Lewinsville should be applied only prospectively.

8-914 Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location

The BZA may approve a special permit to allow a reduction to the minimum yard requirements for any building existing or partially constructed which does not comply with such requirements applicable at the time such building was erected, but only in accordance with the following provisions:

1. The BZA determines that:
 - A. The error exceeds ten (10) percent of the measurement involved, and
 - B. The noncompliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required, and
 - C. Such reduction will not impair the purpose and intent of this Ordinance, and
 - D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity, and
 - E. It will not create an unsafe condition with respect to both other property and public streets, and
 - F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner.
 - G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.
2. In granting such a reduction under the provisions of this Section, the BZA shall allow only a reduction necessary to provide reasonable relief and may, as deemed advisable, prescribe such conditions, to include landscaping and screening measures, to assure compliance with the intent of this Ordinance.
3. Upon the granting of a reduction for a particular building in accordance with the provisions of this Section, the same shall be deemed to be a lawful building.
4. The BZA shall have no power to waive or modify the standards necessary for approval as specified in this Section.

8-918 Additional Standards for Accessory Dwelling Units

As established by the Fairfax County Board of Supervisors' Policy on Accessory Dwelling Units (Appendix 5), the BZA may approve a special permit for the establishment of an accessory dwelling unit with a single family detached dwelling unit but only in accordance with the following conditions:

1. Accessory dwelling units shall only be permitted in association with a single family detached dwelling unit and there shall be no more than one accessory dwelling unit per single family detached dwelling unit.
2. Except on lots two (2) acres or larger, an accessory dwelling unit shall be located within the structure of a single family detached dwelling unit. Any added external entrances for the accessory dwelling unit shall be located on the side or rear of the structure.
~~NO~~ On lots two (2) acres or greater in area, an accessory dwelling unit may be located within the structure of a single family detached dwelling unit or within a freestanding accessory structure.
3. The gross floor area of the accessory dwelling unit shall not exceed thirty-five (35) percent of the total gross floor area of the principal dwelling unit. When the accessory dwelling unit is located in a freestanding accessory structure, the gross floor area of the accessory dwelling unit shall not exceed thirty-five (35) percent of the gross floor area of the accessory freestanding structure and the principal dwelling unit.
4. The accessory dwelling unit shall contain not more than two (2) bedrooms.
5. The occupancy of the accessory dwelling unit and the principal dwelling unit shall be in accordance with the following:
 - A. One of the dwelling units shall be owner occupied.
 - B. One of the dwelling units shall be occupied by a person or persons who qualify as elderly and/or disabled as specified below:
 - (1) Any person fifty-five (55) years of age or over and/or
 - (2) Any person permanently and totally disabled. If the application is made in reference to a person because of permanent and total disability, the application shall be accompanied by a certification by the Social Security Administration, the Veterans Administration or the Railroad Retirement Board. If such person is not eligible for certification by any of these agencies, there shall be submitted a written declaration signed by two (2) medical doctors licensed to

practice medicine, to the effect that such person is permanently and totally disabled. The written statement of at least one of the doctors shall be based upon a physical examination of the person by the doctor. One of the doctors may submit a written statement based upon medical information contained in the records of the Civil Service Commission which is relevant to the standards for determining permanent and total disability.

For purposes of this Section, a person shall be considered permanently and totally disabled if such person is certified as required by this Section as unable to engage in any substantial gainful activity by reasons of any medically determinable physical or mental impairment or deformity which can be expected to result in death or can be expected to last for the duration of the person's life.

C. The accessory dwelling unit may be occupied by not more than two (2) persons not necessarily related by blood or marriage. The principal single family dwelling unit may be occupied by not more than one (1) of the following:

- (1) One (1) family, which consists of one (1) person or two (2) or more persons related by blood or marriage and with any number of natural children, foster children, step children or adopted children.
- (1) One (1) family, which consists of one (1) person or two (2) or more persons related by blood or marriage and with any number of natural children, foster children, step children or adopted children.
- (2) A group of not more than (4) persons not necessarily related by blood or marriage.

6. Any accessory dwelling unit established for occupancy by a disabled person shall provide for reasonable access and mobility as required for the disabled person. The measures for reasonable access and mobility shall be specified in the application for special permit. Generally, reasonable access and mobility for physically handicapped persons shall include:

- A. Uninterrupted access to one (1) entrance; and
- B. Access(ibility and usability of one (1) toilet room.

7. The BZA shall review all existing and/or proposed parking to determine if such parking is sufficient to meet the needs of the principal and accessory dwelling units. If it is determined that such parking is insufficient, the BZA may require the provision of one (1) or more off-street parking spaces. Such parking shall be in addition to the requirements specified in Article 11 for a single family dwelling unit.

- 8. The BZA shall determine that the proposed accessory dwelling unit together with any other accessory dwelling unit(s) within the area will not constitute sufficient change to modify or disrupt the predominant character of the neighborhood. In no instance shall the approval of a special permit for an accessory dwelling unit be deemed a subdivision of the principal dwelling unit or lot.
- 9. Any accessory dwelling unit shall meet the applicable regulations for building, safety, health and sanitation.
- 10. Upon the approval of a special permit, the Clerk to the Board of Zoning Appeals shall cause to be recorded among the land records of Fairfax County a copy of the BZA's approval, including all accompanying conditions. Said resolution shall contain a description of the subject property and shall be indexed in the Grantor Index in the name of the property owners.
- 11. The owner shall make provisions to allow inspections of the property by County personnel during reasonable hours upon prior notice.
- 12. Special permits for accessory dwelling units shall be approved for a period not to exceed five (5) years from the date of approval; provided, however, that such special permits may be extended for succeeding five (5) year periods in accordance with the provisions of Sect. 012 above.
- 13. Notwithstanding Par. 5 of Sect. 9-012, any accessory dwelling unit approved prior to July 27, 1987 and currently valid may be extended in accordance with the provisions of this Section and Sect. 012 above.